

منهاج المسلم

# MINHAJ AL-MUSLIM

A Book of Creed, Manners,  
Character, Acts of Worship  
and other Deeds

Volume: 2

By

**Abu Bakr Jabir Al-Jaza'iry**

Lecturer in the Noble Prophetic Masjid



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**Volume: 2**

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Abdul Hameed

By

**Abu Bakr Jabir Al-Jaza'iry**

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# منهاج المسلم لأبي بكر الجزائري

## *About this Book*

“There was a request made of me during my visits to the Islamic lands...The brothers asked me to compose a book for the righteous believing youth there as well as the Muslims in the general area, to serve as a law or a statute for them. It should comprise all that concerns the righteous Muslim regarding his creed, manners, providing direction for righteous character and acts of worship, and dealings with his colleagues. This book should be based on the light of the Book of Allah the Almighty and the guidance of the Messenger of Allah ﷺ”

“I responded to the righteous brothers' request, seeking help from Allah to compose the requested *Minhaj*. From the first day of my return to the Holy Land (Makkah and Al-Madinah), I started composing, revising, and correcting. Despite my limited spare time and the great responsibilities I bear, Allah the Almighty, has blessed the few hours I managed to save from my days pocket filled with concerns and preoccupation. Only two years had passed since my start and the book was composed exactly as I hoped and as the brothers requested. Here is the book that I submit to the righteous of the Muslim brothers in every place...”



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**MINHAJ  
AL-MUSLIM**





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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**In the Name of Allâh  
the Most Beneficent, the Most Merciful**

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## Funeral Regulations

There are three topics related to funeral regulations:

### Requirements from the Time of Illness to the Time of Death

#### 1. The Obligation for Patience:

The Muslim should adhere to patience when afflicted by any adversity. He should not submit to either desperation nor despondence; since Allāh the Almighty has commanded patience in many a verse in the Noble Qur'an, and so did His Messenger ﷺ in the Sunnah. There is no harm, for the Muslim, when asked about his health to say: "I am ill or I feel pain." But he should add: "Praise is to Allāh in every circumstance."

#### 2. Taking Medication is Recommended:

It is recommended for the Muslim who becomes sick to take lawful medication.

The Messenger of Allāh ﷺ said:

«إِنَّ اللَّهَ لَمْ يَنْزِلْ دَاءً إِلَّا أَنْزَلَ لَهُ شِفَاءً فَتَدَاوُوا»

*«Allāh did not send down any illness, except that He sent down its cure. So take the remedy.»* (Ibn Majah and Al-Hakim who said it is *Sahih*)

It is not allowed to use medications that are made of what is unlawful, such as wine, pork and the like. The Messenger of Allāh ﷺ said:

«إِنَّ اللَّهَ لَمْ يَجْعَلْ شِفَاءَكُمْ فِي مَا حَرَّمَ عَلَيْكُمْ»

*«Indeed Allāh has not placed your cure in what He made*

unlawful for you.» (At-Tabarani with a *Sahih* chain of narration)

### 3. Seeking *Ruqya* is Allowed:

It is allowed for a Muslim to try to have *Ruqya* performed for him with verses of the Qur'an, Prophetic supplications, and good words, due to the saying of the Prophet ﷺ:

«لَا بَأْسَ بِالرُّقَى مَا لَمْ يَكُنْ فِيهِ شِرْكٌ»

«There is no harm in *Ruqya* as long as there is no *Shirk* in it.»  
(Muslim)

### 4. Talismans and Amulets are Unlawful:

Wearing talismans and the use of amulets is unlawful. It is not permissible for a Muslim to wear any talisman due to the saying of the Prophet ﷺ:

«مَنْ عَلَّقَ تَمِيمَةً فَقَدْ أَشْرَكَ»

«Whoever wears a talisman, he has committed *Shirk*.» (Ahmad and Al-Hakim who said it is *Sahih*)

And his saying:

«مَنْ عَلَّقَ تَمِيمَةً فَلَا أَمَّ اللَّهُ لَهُ، وَمَنْ عَلَّقَ وَدْعَةً فَلَا وَدَعَ اللَّهُ لَهُ»

«Whoever wears a talisman may Allāh not help him. Whoever wears shells hoping for achieving his aims and objectives, may Allāh help him not attain them.» (Ahmad and Al-Hakim who said it is *Sahih*)

When the Messenger of Allāh ﷺ saw a man tying a brass ring on his hand, he said to him:

«وَيْحَكَ مَا هَذَا؟»

«Woe to you! What is this?»

The man said: "For weakness." The Messenger of Allāh ﷺ said:

«انْرِغْهَا، فَإِنَّهَا لَا تَزِيدُكَ إِلَّا وَهْنًا، وَإِنَّكَ لَرَمِثٌ وَهِي عَلَيْكَ مَا أَفْلَحْتَ أَبَدًا»

«Remove it. It will only increase your weakness. Indeed, if you die while wearing it, you will never succeed.» (Ahmad)

### 5. Some Ways the Messenger of Allāh ﷺ would Treat a Patient:

The Messenger of Allāh ﷺ used to place his hand on the patient and say:

«اللَّهُمَّ رَبَّ النَّاسِ أَذْهِبِ الْبَاسَ، اشْفِ أَنْتَ الشَّافِي، لَا شِفَاءَ إِلَّا بِشِفَاؤِكَ  
شِفَاءً لَا يُغَادِرُ سَقَمًا»

*Allaahumma rabban-naasi adhhibil-ba's. Ishfi Antash-Shaafee. Laashifaa'a illaa shifaa'uka shifaa'an laa yughaadiru saqamaan.*

«O Lord of the people! Take away the disease. Cure him; since You are the only One to cure. There is no cure except Yours. A cure that leaves no side effect.» (Al-Bukhari)

A man complained to him about his pain. The Messenger of Allāh ﷺ said to him:

«ضَعْ يَدَكَ عَلَى الَّذِي يَأْلَمُ مِنْ جَسَدِكَ، وَقُلْ: بِسْمِ اللَّهِ أَعُوذُ بِعِزَّةِ اللَّهِ وَقُدْرَتِهِ  
مِنْ شَرِّ مَا أَجْدُ وَأُحَازِرُ»

«Place your hand on the location of the pain and say: "In the Name of Allāh"» (three times. Then say:)

*Bismillaah A'udhu bi 'izzatillaah<sup>[1]</sup> wa qadartihī min sharri maa ajidu wa ahaadhir.*

«"I seek refuge in the Dignity of Allāh and His Decree from what I suffer and from what I fear" (seven times).» (Muslim)

[1] The wording of Muslim is:

أَعُوذُ بِاللَّهِ وَقُدْرَتِهِ

*A 'udhu billaahi wa qudratihī.*

«I seek refuge in Allāh and His decree» without the word 'Izzah (Dignity).



Similar is recorded by Muslim, once the Prophet ﷺ felt pain, so Jibril recited some *Ruqya* saying:

«بِسْمِ اللَّهِ أَرْزِقُكَ مِنْ كُلِّ شَيْءٍ يُؤْذِيكَ، مِنْ شَرِّ كُلِّ نَفْسٍ، أَوْ عَيْنٍ حَاسِدٍ، اللَّهُ يَشْفِيكَ، بِسْمِ اللَّهِ أَرْزِقُكَ»

*Bismillaah, arqeeka min kulli shay'in yu'dheeka, min sharri kulli nafsin, aw 'aynin haasid. Allaahu yashfeeka, bismillaahi arqeek.*

*«In the Name of Allāh, I say Ruqya for you against everything that harms you, from every evil soul, or envious eye. May Allāh cure you, in the Name of Allāh I say Ruqya for you.»*

#### **6. It is Allowed to Receive Treatment from a Disbeliever and a Woman:**

There is a consensus among the Muslim scholars that it is permissible for the Muslim to receive treatment from a disbelieving physician provided that he is honest. Likewise the man is permitted to receive treatment from a woman and vice versa in cases of necessity.

The Messenger ﷺ hired some polytheists for some services.<sup>[1]</sup> Some wives of the Companions, may Allāh be pleased with them, used to care for the wounded in *Jihad* during the life time of the Prophet ﷺ.<sup>[2]</sup>

#### **7. Quarantine:**

It allowed, even recommended, to place patients with contagious diseases in separate wards of the hospital, and to prevent the healthy from being around them, with the exception of medical professionals. The Messenger of Allāh ﷺ said:

[1] Among these cases is what is recorded by Al-Bukhari that he ﷺ hired a man as a guide for a journey.

[2] Al-Bukhari recorded that Ar-Rabi'ah bint Ma'wudh said, "We attended battles with the Messenger ﷺ providing water and services for the people and we would return the dead and wounded to Al-Madinah."

«لَا يُورَدُ مُنْرَضٌ عَلَى مُصِحٍّ»

«Do not water the diseased<sup>[1]</sup> camels with the healthy.» (Muslim)

Since this is the case with the diseased animal, then it is even more so with people.

The Messenger of Allāh ﷺ said about the plague:

«إِذَا وَقَعَ بِأَرْضٍ وَأَنْتُمْ بِهَا فَلَا تَخْرُجُوا مِنْهَا، وَإِذَا وَقَعَ بِأَرْضٍ وَلَسْتُمْ بِهَا فَلَا تَهْبِطُوا عَلَيْهَا»

«If it strikes in a land that you are, do not leave it. And if it strikes in a land you are not, do not go there.» (At-Tirmithi and he said that it was *Sahih*)

As to the saying of the Messenger ﷺ:

«لَا عَذْوَى وَلَا طَيْرَةٌ»

«There is neither infection nor bad omen.»

This means that the infection does not affect man by itself; but by the Will of Allāh. Nothing takes place except by the Will of Allāh. This does not prevent anyone from taking the necessary due precautions, believing that Allāh alone is the Protector, and that whom Allāh does not protect, will never be saved.

When the Messenger of Allāh ﷺ was asked about the camel with mange, he replied:

«وَمَنْ أَعْدَى الْأَوَّلُ؟»

«And who did infected the first one?»

In this *Hadith*, the Messenger of Allāh ﷺ informs us that infection is caused by none except Allāh, and that which He wills, will come to pass and what He does not will, will never come to pass.

[1] The "disease" here refers specifically to mange.

### 8. The Obligation of Visiting the Sick:

It is obligatory for the Muslim to visit his brother when he becomes ill. The Messenger of Allāh ﷺ said:

«أَطْعِمُوا الْجَائِعَ، وَعَوِّدُوا الْمَرِيضَ، وَفُكُّوا الْعَانِي - الْأَسِيرَ -»

«Feed the hungry, visit the sick and release the captive.» (Al-Bukhari)

When visiting him during his illness, it is recommended for him to supplicate asking Allāh to cure him and encouraging him to have patience and speaking good words to him. It is also recommended that he not sit with him for too long. When visiting a sick man the Messenger of Allāh ﷺ used to say:

«لَا بَأْسَ، طَهُورٌ إِنْ شَاءَ اللَّهُ»

*La ba's, tahoorun in shaa' Allāh.*

«May there be no harm, it is only purification, if Allāh wills.»

(Al-Bukhari)

So the Muslim should also say that.

### 9. The Sick is Required to Assume Good on Behalf of Allāh:

When the Muslim becomes sick and gets on the verge of death, he should assume good on behalf of Allāh, that Allāh would not torture him but be Merciful at him. He should assume that Allāh would not blame him, but pardon him, for His forgiveness and mercy are boundless, encompassing everything. The Messenger of Allāh ﷺ said:

«لَا يَمُوتَنَّ أَحَدُكُمْ إِلَّا وَهُوَ يُحْسِنُ بِاللَّهِ الظَّنَّ»

«Let none of you die except while assuming good on behalf of Allāh.» (Muslim)

### 10. Encouraging the dying person to the Testimony of Faith:

If the Muslim is present when his Muslim brother is on the verge of death, he should encourage him to recite the Word

of Sincerity: "None has the right to be worshipped except Allāh." Reminding him thereof until he recites it, once he recites it, that will be sufficient for him. But if he says anything other than it, he should repeat the formula, so that the last words of the dying person would be: "None has the right to be worshipped except Allāh." In this way he becomes liable of admittance into Paradise; since the Messenger of Allāh ﷺ said:

«لَقِّنُوا مَوْتَكُمْ لَا إِلَهَ إِلَّا اللَّهُ»

*«Encourage your dying to say: "None has the right to be worshipped except Allāh."» (Muslim)*

He ﷺ also said:

«مَنْ كَانَ آخِرُ كَلَامِهِ لَا إِلَهَ إِلَّا اللَّهُ دَخَلَ الْجَنَّةَ»

*«Whoever's last words be: "None has the right to be worshipped except Allāh, he will be admitted into Paradise."» (Ahmad and Abu Dawud and it is Hasan)*

### **11. Laying the dying person in the direction of the Qiblah:**

When the signs of death appear, the dying person should be faced toward the Qiblah, laying him on his right side if possible, if not, he should be placed lying on his back with his feet in the direction of the Qiblah. If the pangs of death become intense, then Surah Ya-Sin (36) should be recited over him, so that Allāh the Almighty might alleviate what he is suffering due its blessings. The Messenger of Allāh ﷺ said:

«مَا مِنْ مَيِّتٍ يَمُوتُ فَتُقْرَأَ عِنْدَهُ (يَس) إِلَّا هَوَّنَ اللَّهُ عَلَيْهِ»

*«There is not a dying person whom you recite Yā-Sin for except Allāh alleviates his suffering.»<sup>[1]</sup>*

[1] Recorded in Al-Firdaws from Abu Ad-Darda' and Abu Dharr and it is weak. A different wording was recorded by Abu Dawud and An-Nasa'i.

## 12. Closing the eyes and covering him:

When the soul of the Muslim is taken away, his eyes should be closed and his body should be covered. Nothing but good should be said about him, such as: "O Allāh! Forgive him. O Allāh! Shower Your Mercy on him."

The Messenger of Allāh ﷺ entered shortly after Abu Salamah, may Allāh be pleased with him, had died, he closed his eyes as saying:

«إِنَّ الرُّوحَ إِذَا قُبِضَ تَبِعَهُ الْبَصَرُ»

*«Indeed, when the soul is taken away, the sight follows it.»*

When some of his relatives made some noise, the Messenger of Allāh ﷺ said:

«لَا تَدْعُوا عَلَى أَنْفُسِكُمْ إِلَّا بِخَيْرٍ، فَإِنَّ الْمَلَائِكَةَ يُؤْمِنُونَ عَلَى مَا تَقُولُونَ»

*«Do not invoke except good; since the angels say Aameen to what you say.» (Muslim)*

## What is Necessary from the Time of Death to the time of Burying

### 1. Announcing the Death:

It is recommended to announce the death of the Muslim to his relatives, his friends, and to the righteous people of his quarter to attend his funeral. The Messenger of Allāh ﷺ announced the death of An-Najashi to the people. He also announced the death of Zayd, Ja'far, and 'Abdullah bin Rawahah when they were martyred.

Only the public proclamation in a loud voice, in the streets, at the gates of the *Masjids* is prohibited.

### 2. Weeping is Allowed, Wailing is Prohibited:

Wailing and crying for the death of anyone is prohibited. The Messenger of Allāh ﷺ said:

«إِنَّ الْمَيِّتَ لَيُعَذَّبُ بِبُكَاءِ الْحَيِّ»

«Indeed, the deceased is tortured because of the weeping (the wailing) of the living.» (Muslim)

And his saying:

«مَنْ نَحَّحَ عَلَيْهِ فَإِنَّهُ يُعَذَّبُ بِمَا نَحَّحَ عَلَيْهِ يَوْمَ الْقِيَامَةِ»

«He who was wailed over, will be tortured because of that wailing on the Day of Judgement.» (Muslim)

The Messenger of Allāh ﷺ used to take a pledge from women not to wail; as narrated by Umm 'Atiyyah. The Messenger of Allāh ﷺ also said:

«إِنِّي بَرِيءٌ مِنَ الصَّالِقَةِ وَالْحَالِقَةِ وَالشَّاقَةِ»

«I am innocent of those who wail, shave, or tear their clothes (in mourning).» (Al-Bukhari)

As for weeping, there is no harm in it. When his son Ibrahim died, the Messenger of Allāh ﷺ said:

«إِنَّ الْعَيْنَ تَدْمَعُ وَالْقَلْبَ يَحْزَنُ، وَلَا تَقُولُ إِلَّا مَا يُرْضِي رَبَّنَا، وَإِنَّا بِفِرَاقِكَ يَا إِبْرَاهِيمَ لَمَحْزُونُونَ»

«Indeed, the eyes shed tears, the heart grieves, but we say nothing but what pleases our Lord. We are sad because of your death, O Ibrahim.» (Al-Bukhari)

The Messenger of Allāh ﷺ also wept upon the death of Umamah, his grand-daughter from Zaynab, may Allāh be pleased with them. It was said to him: “Do you weep? Did not you prohibit us from weeping?” He said:

«إِنَّمَا هِيَ رَحْمَةٌ جَعَلَهَا اللَّهُ فِي قُلُوبِ عِبَادِهِ، وَإِنَّمَا يَرْحَمُ اللَّهُ مِنْ عِبَادِهِ الرُّحَمَاءَ»

«It is only mercy that Allāh put in the hearts of His servants. Allāh has mercy only on the merciful among His servants.» (Al-Bukhari)

### 3. The Prohibition of Dressing as a Mourner<sup>[1]</sup> for More than Three Days:

It is unlawful for the Muslim woman to dress as a mourner for more than three days, except in the case of the death of her husband. In that case it is obligatory for her to do so for four months and ten days. This is due to the saying of the Prophet ﷺ:

«لَا تُجِدُ الْمَرْأَةَ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى زَوْجٍ، فَإِنَّهَا تُجَدُّ عَلَيْهِ أَرْبَعَةٌ أَشْهُرٌ وَعَشْرًا»

*«The woman is not to dress as a mourner upon the death of anyone for more than three days, except in the case of the husband. Then she is to do so for four months and ten (days).»*

(Al-Bukhari and Muslim)

### 4. Paying off his debts:

It is necessary to expedite paying any debts the deceased may have. This is because the Messenger ﷺ would not pray for one with a debt until his debt was paid. He said:

«نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ، حَتَّى يُقْضَى عَنْهُ»

*«The believers soul is suspended by its debt until it is rectified.»* (Al-Bukhari)

### 5. Al-Istirja',<sup>[2]</sup> Supplication, and Patience:

It is necessary for the family of the deceased to remain patient, particularly during this period of time. This is because the Prophet ﷺ said:

«إِنَّمَا الصَّبْرُ عِنْدَ الصَّدْمَةِ الْأُولَى»

*«Patience is only at the initial shock.»* (Al-Bukhari)

They should increase in supplications and reciting the

[1] Meaning to not adorn herself with any kohl, henna or fragrance.

[2] Meaning to utter the statement: "We are Allah's and to Him we all will return" as explained in the *Hadith* that follows.

phrase of *Al-Istirja'*: "We are Allāh's and to Him we will return." The Messenger of Allāh ﷺ said:

«مَا مِنْ عَبْدٍ تُصِيبُهُ مُصِيبَةٌ فَيَقُولُ:

*«There is no servant who suffers an affliction and says:*

إِنَّا لِلَّهِ وَإِنَّا إِلَيْهِ رَاجِعُونَ، اللَّهُمَّ أَجْزِنِي فِي مُصِيبَتِي، وَأَخْلِفْ لِي خَيْرًا مِنْهَا»

*Innaalillaahi wa inna ilayhi raaji'oon. Allaahumma'-  
jurnee fee museebatee, wa akhliflee khayran minhaa.*

*"We are Allāh's and to Him we will return. O Allāh! Reward me with good in my adversity, and compensate me with better than it," except that Allāh rewards him abundantly, and compensates him with what is better.» (Muslim)*

He ﷺ also said:

«يَقُولُ اللَّهُ تَعَالَى: مَا لِعَبْدِي الْمُؤْمِنِ عِنْدِي جَزَاءٌ، إِذَا قُبِضَتْ صَفِيَّةٌ مِنْ أَهْلِ الدُّنْيَا ثُمَّ اخْتَسِبَتْ، إِلَّا الْجَنَّةَ»

*«Allāh the Most High said, "There is nothing for My believing servant - from whom I take away the soul of his beloved, then he anticipates a reward from Me - except Paradise."» (Al-Bukhari)*

## 6. The Obligation of Washing the Body:

When a Muslim passes away - whether young or old and whether his body is complete or not - it is obligatory to wash him. Those Muslims who are not washed are the martyrs killed by disbelievers in the battlefield. The Messenger of Allāh ﷺ said:

«لَا تَتَسَلَوْهُمْ، فَإِنَّ كُلَّ جُرْحٍ أَوْ كُلِّ دَمٍ يَقْوَحُ مِنْكَ يَوْمَ الْقِيَامَةِ»

*«Do not wash them. Each wound - or each drop of blood - will be musk on the Day of Judgement.» (Ahmad with Sahih chain of narration)*



## 7. The Description of the Washing:

If water is poured over the body such that it covers all of it, it will be sufficient. But the following description is the most complete form of that recommended:

The deceased is put on something elevated. The one washing him should be an honest and righteous person. The Messenger of Allāh ﷺ said:

«لْيَغْسِلْ مَوْتَانُكُمُ الْمَأْمُونُونَ»

«Let the honest wash your dead.» (Ibn Majah with a weak chain)

He should slightly press his stomach so that anything remaining would come out. Then he wraps a piece of cloth around his hand, and intends to wash him. He starts by washing his private parts to remove any filth. Then he removes the piece of cloth and washes him in the manner of *Wudhu'*. Then he washes the entire body, beginning with the upper part down to the lower part, doing so three times. If perfect purity is not attained, he washes him five times, using soap or the like in the last washing.

If the deceased is a woman, her hair should be undone and washed, then braided again. The Messenger of Allāh ﷺ commanded doing this with his daughter Zaynab. (Al-Bukhari) Then camphor or some kind of fragrance should be applied.

## 8. *Tayammum* is Sufficient when Necessary:

When there is no water available to wash the dead, or the deceased is a man among women or a woman among men, then *Tayammum* should be performed on the body and it should be shrouded, the funeral prayer is performed, and the body is buried. *Tayammum* is a substitute for *Ghusl* when there is a necessity, just as in the case of one in a state of sexual impurity who is unable to perform *Ghusl*, he performs *Tayammum* and prays. The Messenger of Allāh ﷺ said:

«إِذَا مَاتَتِ الْمَرْأَةُ مَعَ رَجَالٍ لَيْسَ مَعَهُمْ امْرَأَةٌ غَيْرُهَا، وَالرَّجُلُ مَعَ النِّسَاءِ لَيْسَ مَعَهُنَّ رَجُلٌ غَيْرُهُ، فَإِنَّهُمَا يَسْتَمَانِ وَيُذَفَّنَانِ»

«If a woman dies among men and there was no woman besides her, or a man passes away among women and there was no man besides him, they should be given Tayammum and be buried.»<sup>[1]</sup>

Their status is similar to those who do not find water. (Al-Bayhaqi)

### 9. One of the couple is permitted to wash the other:

The husband is permitted to wash his wife and the wife is permitted to wash her husband. The Messenger of Allāh ﷺ said to 'A'ishah, may Allāh be pleased with her:

«لَوْ مِتَّ لَعَسَلْتُكَ وَكَفَّمْتُكَ»

«If you would pass away, I would wash and shroud you.»<sup>[2]</sup>

'Ali, may Allāh be pleased with him, washed his wife Fatimah, may Allāh be pleased with her.<sup>[3]</sup>

The woman is permitted to wash a boy of six years old or less. As for a man washing a girl, the people of knowledge dislike it.

### 10. The Shroud is obligatory:

It is obligatory to shroud the Muslim after washing. This is to be done with whatever will cover the entire body. Mus'ab bin 'Umayr, one of the martyrs of Uhud - may Allāh be pleased with him - was shrouded with a cloth that was short, so Allāh's Messenger ﷺ ordered that his head and body be covered with it, and that his legs be covered with *Idhkhir* (lemon-grass). (Al-Bukhari) Thus, covering the whole

<sup>[1]</sup> Abu Dawud in his *Marasil*, the majority of the scholars of *Fiqh* act according to it.

<sup>[2]</sup> Ibn Majah, Ahmad and An-Nasa'i with weak chain of narration.

<sup>[3]</sup> Al-Bayhaqi, Ad-Daraqutni, Ash-Shafi'i, with a *Hasan* chain.

body is inferred from this.

### 11. A Clean White Shroud is Recommended:

Whether the shroud is new or old, it is recommended that the shroud be white and clean. The Messenger of Allāh ﷺ said:

«الْبُسُوَا مِنْ ثِيَابِكُمْ الْبَيَاضَ، فَإِنَّهَا مِنْ خَيْرِ ثِيَابِكُمْ، وَكَفَّنُوا فِيهَا مَوْتَاكُمْ»

*«Wear white clothes; since they are the best of your clothes, and shroud your dead with them.»* (At-Tirmithi and he said that it was *Sahih*)

It is desirable that the shroud should be scented with 'Uwd. The Messenger of Allāh ﷺ said:

«إِذَا أَجْمَرْتُمْ الْمَيِّتَ فَأَجْمِرُوهُ ثَلَاثًا»

*«If you scent the deceased, scent him thrice.»* (Ahmad and Al-Hakim who said it is *Sahih*)

The shroud should be of three layers for the man and five layers for the woman. The Messenger of Allāh ﷺ was shrouded in three white new winding sheets. There was neither shirt nor headwear. The *Muhrim* (one in the state of *Ihram* for the *Hajj* pilgrimage or '*Umrah*, the lesser pilgrimage) is to be shrouded in his *Ihram* - the *Rida'* (upper-wrap) and *Izar* (waist-sheet). He should not be perfumed, and his head should not be covered. The Messenger of Allāh ﷺ said about the man who passed away on the Day of '*Arafah*:

«غَسِّلُوهُ بِمَاءٍ وَسِدْرٍ، وَكَفَّنُوهُ فِي ثَوْبَيْهِ، وَلَا تُحْطَرُوهُ، وَلَا تُخْمَرُوا رَأْسَهُ، فَإِنَّهُ يَبْعَثُ يَوْمَ الْقِيَامَةِ مُلَبَّيًّا»

*«Wash him with water and lotus, and shroud him in his two pieces (of Ihram), and do not cover his head, for Allāh will raise him on the Day of Resurrection pronouncing the Talbiyah.»* (Al-Bukhari and Muslim)

## 12. The Silk Shroud

It is unlawful to shroud men with silk since it is prohibited for the Muslim man to wear silk. As for woman, although wearing silk is permitted for her, it is disliked to wrap her in a shroud of silk sheets. This is a form of extravagance and extremism - the two things prohibited in the *Shari'ah*. It is narrated that the Messenger of Allāh ﷺ said:

«لَا تَغَالُوا بِالْكَفَنِ، فَإِنَّهُ يُسَلَبُ سَرِيعًا»

«Do not exaggerate with shrouds, since they perish swiftly.»

(Abu Dawud and in its chain is one who is criticized.)

Abu Bakr, may Allāh be pleased with him, said: "The living one is more worthy of the new than the dead. The shroud is for the pus and matter that comes out of the deceased." (Al-Bukhari)

## 13. Performance of the Funeral Prayer for the Deceased:

Performance of the funeral prayer for the deceased Muslim, like his washing, his shrouding and burial, is a collective duty; if a group of them does it, the remainder of them are not required to do it. The Messenger of Allāh ﷺ used to perform the funeral prayer for the deceased Muslims, he even accepted that in the case of a believer in debt, when he died as a Muslim without paying the debt, that this did not prevent him from being prayed for. He said:

«صَلُّوا عَلَى صَاحِبِكُمْ»

«Perform the *Salah* for your companion.» (Al-Bukhari)

## 14. The Conditions for the Prayer for the Dead:

The conditions for *Salat-ul-Janazah*, the funeral prayer, are the same as those for the prayer in general. The Muslim should be purified of both the minor and major impurities, covering the parts of the body that should be covered, and facing the *Qiblah*. The Messenger of Allāh ﷺ called it *Salah*, thus whatever applies to *Salah* in general, applies to the funeral prayer as well. The Messenger of Allāh ﷺ would say:

«صَلُّوا عَلَى صَاحِبِكُمْ»

«Perform the Salah for your companion.» (Al-Bukhari)

### 15. The Obligatory Elements of the Funeral Prayer:

The obligatory acts of the funeral prayer are:

Standing, for those who are able, and the intention since the Prophet ﷺ said:

«إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ»

«Deeds are judged by their intentions.» (Al-Bukhari)

recitation of *Al-Fatihah*, praise and thanks to Allāh, prayers and blessings for the Prophet ﷺ, four *Takbirs*, supplication, and the *Taslim*.

### 16. How to Perform the Funeral Prayer:

The deceased - one or more than one - are placed facing the *Qiblah*. The Imam stands with three rows or more behind him (facing the *Qiblah*). The Messenger of Allāh ﷺ said:

«مَنْ صَلَّى عَلَيْهِ ثَلَاثَةٌ صُفُوفٍ فَقَدْ أُوجِبَتْ»

«For whomever three rows or more pray, his (entrance to Paradise) will be obligatory.» (At-Tirmithi)

Then he raises his hands, intending the funeral prayer for the deceased. If they are more than one, he intends accordingly. Then he says, "*Allāhu Akbar*." Then he recites *Al-Fatihah*, praises Allāh the Almighty, then he expresses gratitude to Allāh, then says the *Takbir*, raising his hands if he wills or leaving them on his chest, the right on the left. Then he recites the Ibrahimite prayer for the Prophet ﷺ. Then he utters the *Takbir* and prays for the deceased. Then he utters the *Takbir*, supplicates and says the *Taslim* if he wills. Or utters the *Taslim* after the fourth *Takbir*, doing so with only one *Taslim*.

It is narrated in the Sunnah for the funeral prayer that the

Imam performs the *Takbir*, then silently recites *Al-Fatihah* to himself after the first *Takbir*. Then he says prayers for the Prophet ﷺ and sincere supplications for the deceased with each *Takbir*, not reciting anything loudly in them, then saying the *Taslim* silently to himself. (Ash-Shafi'i and Al-Hafidh [Ibn Hajr] said that its chain is *Sahih*.)

### 17. The One coming Late in the Funeral Prayer:

The one who is late has the choice if he wishes either to finish the *Takbirs* he missed of the funeral prayer, in succession, or to say the *Taslim* with the Imam.

When 'A'ishah, may Allāh be pleased with her, told the Messenger of Allāh ﷺ that sometimes she does not hear the *Takbir*, the Messenger of Allāh ﷺ said to her:

«مَا سَمِعْتِ فَكَبِّرِي، وَمَا فَاتَكَ فَلَا فِضَاءَ عَلَيْكَ»

«Say what you hear of the *Takbir*, as for what you miss, you do not have to make it up.»

The author of *Al-Mughni* (Ibn Qudamah) argues with this narration but I do not know of a reference for it.

### 18. The One Who was Buried without a Funeral Prayer:

If one is buried without the funeral prayer, then the prayer may be performed while he is in the grave. The Messenger of Allāh ﷺ and his Companions (may Allāh be pleased with them) performed the funeral prayer for the woman who used to clean the mosque after her burial. (Al-Bukhari)

Additionally it is prayed for those not present, even if they are far away, since the Prophet ﷺ prayed it for An-Najashi. An-Najashi was in Ethiopia and the Messenger ﷺ and the believers were in Al-Madinah.

### 19. The Supplication:

There are many reported versions of supplications the Messenger of Allāh ﷺ would say during the funeral prayer. The following are some of them:

«اللَّهُمَّ إِنَّ فُلَانًا بَنَ فُلَانٍ فِي ذِمَّتِكَ وَحَبْلِي جَوَارِكَ، فَقِهِ مِنْ فِتْنَةِ الْقَبْرِ وَعَذَابِ النَّارِ، وَأَنْتَ أَهْلُ الْوَفَاءِ وَالْحَقِّ. اللَّهُمَّ فَارْحَمْهُ، فَإِنَّكَ أَنْتَ الْعُفُورُ الرَّحِيمُ. اللَّهُمَّ اغْفِرْ لِحَيَّتِنَا وَمَيِّتِنَا وَصَغِيرِنَا وَكَبِيرِنَا وَذَكَرْنَا وَأُنْثَانَا وَحَاضِرِنَا وَغَائِبِنَا. اللَّهُمَّ مَنْ أَحْيَيْتَهُ مِنَّا فَأَحْيِهِ عَلَى الْإِسْلَامِ، وَمَنْ تَوَفَّيْتَهُ مِنَّا فَتَوَفَّهُ عَلَى الْإِيمَانِ. اللَّهُمَّ لَا تَحْرِمْنَا أَجْرَهُ وَلَا تُضِلَّنَا بَعْدَهُ»

*Allaahumma inna fulaana bin fulaanin fi thimmatika wa habli jiwaarik, faqihi min fitnatil-qabri wa 'athaabin-naar, wa Anta ahlul-wafaa'i wal haqq. Allaahumma faaghfir lahu warhamhu, faa innaka Antal-Ghafoorur-Raheem. Allaahum-maaghfir lihayyinaa wa mayyitinaa, wa sagheerinaa wa kabeerinaa, wa thakarinaa wa unthaanaa, wa haadhirinaa wa ghaa'ibinaa. Allaahumma man ahyaytahu minnaa fa ahyihi 'alal-Islaam, wa man tawffaytahu minnaa fatawaffahu 'alaal-eemaan. Allaahumma laa taharimnaa ajrahu wa laa tudhillanaa ba'dahu.*

«O Allāh! Indeed so-and-so, the son of so-and-so is under Your protection and covenant, so protect him from the turmoil in the grave and from the chastisement of the Fire. You are the One Worthy of fulfillment and truthfulness. O Allāh! Forgive him and have mercy on him; since You are the Forgiving, the Merciful. O Allāh! Forgive our living and our dead, our young and our old, our male and our female, our present and our absent. O Allāh! Whom You caused to be alive among us, let him live in Islam. And whom You cause to die among us, let him die in faith. O Allāh! Deprive us not of the reward and do not cause us to go astray after him.»

If the deceased is young, he would ﷺ say:

«اللَّهُمَّ اجْعَلْهُ لِرِوَالِدَيْهِ سَلَفًا وَدُخْرًا وَقَرَطًا، وَثَقُلْ بِهِ مَوَازِينَهُمْ، وَأَعْظِمْ بِهِ أَجْرَهُمْ، وَلَا تَحْرِمْنَا وَلِيَّائَهُمْ أَجْرَهُ، وَلَا تَفْتِنَّا وَلِيَّائَهُمْ بَعْدَهُ، اللَّهُمَّ أَلْحِقْهُ بِصَالِحِ سَلَفِ الْمُؤْمِنِينَ فِي كَفَالَةِ إِبْرَاهِيمَ، وَأَبْدِلْهُ دَارًا خَيْرًا مِنْ دَارِهِ وَأَهْلًا

خَيْرًا مِنْ أَهْلِهِ، وَعَافِهِ مِنْ فِتْنَةِ الْقَبْرِ، وَمِنْ عَذَابِ جَهَنَّمَ»

Allaahum-maj'alhu liwaalidayhi salafan wa thukhran wa faratan, wa thaqqil bihi mawaazeenahum, wa a'dhim bihi ujoorahum, wa laa tahrimnaa wa iyyaahum ajrahu, wa laa taftinnaa wa iyyaahum ba'dahu. Allaahumma alhiqhu bisalihi salafil-mu'mineena fee kafaalati Ibraaheema, wa abdilhu daaran khayran min daarihi wa ahlaan khayran min ahlihi, wa 'aafihi min fitnatil-qabri, wa min 'athaabi jahannam.

«O Allāh! Make him an advancement for his parents, storing, overweighing and bearing down on the Scales of his parents, and augment by him their reward. O Allāh! Deprive neither us nor them of the reward, persecute neither us nor them after his death. O Allāh! Let him join the righteous predecessors of the believers under the auspices of Ibrahim. O Allāh! Give him a residence better than his residence and a household better than his household. O Allāh! Exempt him from torment in the grave and from the chastisement of the Fire.»

## 20. Following the Funeral Procession and its Virtue:

Following the funeral procession is a Sunnah. The Messenger of Allāh ﷺ said:

«عُودُوا الْمَرِيضَ، وَامْشُوا مَعَ الْجَنَازَةِ تُذَكَّرُكُمْ الْآخِرَةُ»

«Visit the sick, and follow the funeral procession; this reminds you of the Hereafter.» (Muslim)

The burial should be done quickly due to the saying of the Prophet ﷺ:

«أَسْرِعُوا، فَإِنْ تَكَ صَالِحَةً فَخَيْرٌ تُقَدِّمُونَهَا إِلَيْهِ، وَإِنْ تَكَ سَوَى ذَلِكَ فَشَرٌّ تَضَعُونَهُ عَنْ رِقَابِكُمْ»

«Hasten (the burial), if he is righteous, you are hastening him to good. If not, then it is evil you are removing from your



necks.» (Al-Bukhari)

It is desirable to walk in front of the body as the Prophet ﷺ and Abu Bakr, may Allāh be pleased with him, used to walk in the front of the body to be buried.<sup>[1]</sup>

The virtue of the funeral procession is clear from the saying of the Messenger of Allāh ﷺ:

«مَنْ اتَّبَعَ جَنَازَةَ مُسْلِمٍ إِيْمَانًا وَاحْتِسَابًا، وَكَانَ مَعَهَا حَتَّى يُصَلَّى عَلَيْهَا وَيُفْرَغَ مِنْ دَفْنِهَا، فَإِنَّهُ يَرْجِعُ مِنَ الْأَجْرِ بِقِيرَاطَيْنِ، كُلُّ قِيرَاطٍ مِثْلُ أُحُدٍ، وَمَنْ صَلَّى عَلَيْهَا ثُمَّ رَجَعَ قَبْلَ أَنْ تُدْفَنَ فَإِنَّهُ يَرْجِعُ بِقِيرَاطٍ»

*«Whoever follows the funeral procession of a Muslim out of faith and hoping for reward (from Allāh), then he stays until the funeral prayer and the burial end, will return with two Qirats, each one of them is as huge as the mount of Uhud. And whoever attends it until the funeral prayer will have a reward equal to one Qirat.»* (Al-Bukhari)

## 21. What is Disliked while Following the Funeral:

It is disliked for women to go out to follow the funeral. This is because of the saying of Umm 'Atiyyah, may Allāh be pleased with her, "We were prohibited from following funeral, but without being strict on us." (Muslim)

Similarly it is disliked to raise the voice while attending the funeral procession with remembrance of Allāh or recitation. The Companions of the Messenger ﷺ, may Allāh be pleased with them, disliked raising the voice for three things:

- i) The funeral.
- ii) The remembrance (of Allāh).
- iii) And while fighting.<sup>[2]</sup>

It is also disliked to sit before laying down the body. The

[1] Recorded by Abu Dawud, An-Nasa'i and others. The majority of the scholars say that walking in front of the body is recommended.

[2] Ibn Al-Mundhir from Qays bin 'Ubadah.

Messenger of Allāh ﷺ said:

«إِذَا اتَّبَعْتُمُ الْجَنَازَةَ فَلَا تَجْلِسُوا حَتَّى تُوَضَعَ بِالْأَرْضِ»

«If you follow the funeral, do not sit till it is placed in the earth.» (Al-Bukhari and Muslim)

## 22. The Burial:

Burying the dead, by completely covering the body with dirt, is a collective duty. Allāh the Almighty says:

﴿ثُمَّ أَنَا فَاعٍ بِرُوحِهِ﴾

«Then he causes him to die and puts him in his grave.» (80:21)

Following are the rules for the burial:

i) Deepening the grave in order to prevent carnivorous animals and predatory birds from reaching it, and to prevent any odor lest it would cause harm to the living. The Messenger of Allāh ﷺ said:

«اخْفِرُوا وَأَعْمِقُوا وَأَحْسِنُوا وَادْفِنُوا الْاِثْنَيْنِ وَالثَّلَاثَةَ فِي قَبْرِ وَاحِدٍ»

«Dig and deepen well. And bury two and three in one grave.»

They said:

“Who should be buried first?” He said:

«قَدِّمُوا أَكْثَرَهُمْ قُرْآنًا»

«Precede with the one who memorized most of the Qur'an.»

(At-Tirmithi and he said that it is *Sahih*)

ii) Although burying at the bottom of the grave is allowed, it is better to use a *Lahd*, because the Messenger of Allāh ﷺ said:

«الْحَدُّ لَنَا وَالشَّقُّ لِبَغَيْرِنَا»

«The Lahd is for us, while Shaqq is for the others.»<sup>[1]</sup>

[1] Ahmad, Abu Dawud and At-Tirmithi, and in its chain is one who is criticized, although some of them considered it *Sahih*.

*Lahd* refers to a niche placed on the right side of the grave, while *Shaqq* is the hole in the center of the grave.

iii) It is desirable for each of those who attend the burial to throw three handfuls of dirt on the grave near the head of the body; as the Messenger of Allāh ﷺ did, as mentioned by Ibn Majah with a chain that has no harm in it.

iv) The body is to be entered from the end of the grave and to be placed on his right side facing the *Qiblah*. The bands of his shroud should be untied. The following should be said while placing the body there:

«بِسْمِ اللَّهِ وَعَلَىٰ مِلَّةِ رَسُولِ اللَّهِ»

*Bismillaah, wa 'alaa millati rasoolillaah.*

“In the Name of Allāh, and in conformity with the religion of the Messenger of Allāh.” (Abu Dawud and Al-Hakim, and he said it is *Sahih*); as this was done by him ﷺ.

v) The woman's grave should be covered with a cloth at the time of her burial. The predecessors used to cover the woman's grave during her burial. This was not done in the case of the man.

## What Should be Done After the Burial

### 1. Asking for Forgiveness and Supplicating for the Deceased:

It is desirable for those who attend a burial to ask forgiveness for the deceased, and to ask Allāh to keep him firm during the questioning. The Messenger of Allāh ﷺ said:

«اسْتَغْفِرُوا لِأَخِيكُمْ، وَسَلُّوا لَهُ التَّيِّبَاتِ فَإِنَّهُ الآنَ يُسْأَلُ»

«Ask forgiveness for your brother and ask Allāh to keep him firm; since he is being questioned now.» (Ibn Majah with *Hasan* chain of narration)

The Messenger of Allāh ﷺ would say this upon completing

the burial. Some of the predecessors<sup>[1]</sup> would say:

«اللَّهُمَّ هَذَا عَبْدُكَ نَزَلَ بِكَ، وَأَنْتَ خَيْرُ مَنْزُولٍ بِهِ، فَاغْفِرْ لَهُ وَوَسِّعْ مَدْخَلَهُ»

*Allaahumma hathaa 'abduka nazala bika, wa Anta khayru manzulin bihi, faaghfir lahu wa wassi' mudkhalahu.*

“O Allāh! This is Your servant who has come to You as a guest; and You are the Best One (to entertain the guest). So, forgive him and make his entrance spacious.”

## 2. Leveling the Earth over the Grave:

It is necessary to level the earth over the grave, since the Messenger of Allāh ﷺ commanded that. Yet, raising the grave about a hand span from the earth is permissible. The majority of the scholars consider it recommended because the grave of the Prophet ﷺ was raised in this manner.

There is no harm in placing an indicator over the grave so it may be known who its inhabitant is, be it a stone or otherwise. The Messenger of Allāh ﷺ marked the grave of 'Uthman bin Madh'un with a rock and said:

«أَتَعْلَمُ بِهَا قَبْرَ أَخِي؛ وَأَذْفِنُ إِلَيْهِ مَنْ مَاتَ مِنْ أَهْلِي»

*«To distinguish the grave of my brother and to bury the deceased of my family.»*

## 3. Plastering or Constructing over the Grave is Unlawful:

It is unlawful to plaster over or build over a grave, since it is recorded by Muslim that the Prophet ﷺ forbade doing so.

## 4. Sitting on the Grave is Disliked:

It is disliked for a Muslim to sit on the grave of his Muslim brother or step on it with his feet because of the saying of the Messenger of Allāh ﷺ:

[1] Among them Ibn Mas'ud, may Allāh be pleased with him.

«لَا تَجْلِسُوا عَلَى الْقُبُورِ، وَلَا تُصَلُّوا إِلَيْهَا»

«Do not sit on the graves, and do not perform Salah at them.»  
(Muslim)

And his saying:

«لَأَنْ يَجْلِسَ أَحَدُكُمْ عَلَى جَمْرَةٍ فَتُحْرِقَ ثِيَابَهُ فَتُخْلَصَ إِلَى جِلْدِهِ خَيْرٌ مِنْ أَنْ  
يَجْلِسَ عَلَى قَبْرِ»

«It is better for anyone of you to sit on a brand that burns his  
clothing through to his skin than to sit on a grave.» (Muslim)<sup>[1]</sup>

### 5. It is Unlawful to Build *Masjids* over Graves:

It is unlawful to build *Masjids* over graves and to place torches upon them to illuminate them. The Messenger of Allāh ﷺ said:

«لَعَنَ اللَّهُ زَوَارَاتِ الْقُبُورِ وَالْمُتَخَذَاتِ عَلَيْهَا الْمَسَاجِدَ وَالشُّرُجَ»

«Allāh's curse be upon the women that (frequently) visit the  
graves and illuminate them.» (At-Tirmithi and Al-Hakim and it is  
Sahih)

And his saying:

«لَعَنَ اللَّهُ الْيَهُودَ اتَّخَذُوا قُبُورَ أَنْبِيَائِهِمْ مَسَاجِدَ»

«Allāh's curse be upon the Jews, they took the graves of their  
Prophets as *Masjids*.» (Al-Bukhari and Muslim)

### 6. Exhuming and Relocating the Remains is Unlawful:

To exhume the grave and relocate the remains of the deceased is prohibited, except for an urgent need, such as burying him without bathing him first, etc. It is also disliked to transport from one country to another the deceased who has not been buried, except to one of the two sacred places; Makkah or Al-Madinah, and similarly to

[1] Some scholars interpret the sitting mentioned here as the sitting for answering the call of nature.

Jerusalem. The Messenger of Allāh ﷺ said:

«اذْفِنُوا الْقَتْلَى فِي مَصَارِعِهِمْ»

«Bury those killed where they met their end.» (Abu Dawud and others and it is *Sahih*)

## 7. Condolence is desirable:

It is recommended to console the family of the deceased, men or women, before the burial or after it up to three days. Exceptions to this are the case of one who was far away or not present during this period, then it may be delayed. The Messenger of Allāh ﷺ said:

«مَا مِنْ مُؤْمِنٍ يُعْزَى أَخَاهُ بِمُصِيبَةٍ إِلَّا كَسَاهُ اللَّهُ عَزَّ وَجَلَّ مِنْ حُلِيِّ الْكَرَامَةِ يَوْمَ الْقِيَامَةِ»

«There is no believer who consoles his brother for any suffering, except that Allāh the Almighty clothes him with a garment of dignity on the Day of Judgement.» (Ibn Majah with *Hasan* chain of narration)

## 8. The Meaning of Condolence:

Condolence is to condole the family of the deceased by encouraging them to be patient and mentioning what will alleviate their grief and the effects of the disaster in any form. It is narrated that the Messenger of Allāh ﷺ sent a messenger to his daughter, may Allāh be pleased with her, when she had informed him of the death of her son. He said:

«إِنَّ اللَّهَ مَا أَخَذَ، وَلَهُ مَا أُعْطِيَ، وَكُلُّ شَيْءٍ عِنْدَهُ بِأَجَلٍ مُسَمًّى، فَلْتَصْبِرْ وَلْتَحْسِبْ»

«Indeed, what Allāh has taken is His and what Allāh has given is His. Each thing with Him has a predetermined term. So be patient and hope for reward (from Allāh).» (Al-Bukhari)

One of the righteous predecessors consoled a man for the

death of his son, saying:

“From so-and-so to so-and-so. Peace be upon you. I praise Allāh, there is none worthy of worship except Him. To proceed: May Allāh reward you abundantly, grant you patience, and inspire both us and you gratitude; since our souls, wealth, and families are gifts from Allāh and entrusted by Him to us. May Allāh grant you pleasure and great reward through his passing. Praise, mercy and guidance, are yours if you maintain hope in Allāh. So be patient, do not let your anguish foil your reward and cause you to regret. And know that anguish neither restores the dead nor repels grief. And know also that what is preordained will come to pass. And peace be upon you.”

It is sufficient to console with some words like these:

(أَعْظَمَ اللَّهُ أَجْرَكَ، وَأَحْسَنَ عَزَاكَ وَغَفَرَ لِمَيِّتِكَ)

*A'dhamal-laahu ajrak, wa ahsana 'azaaka wa ghafara limayitik.*

“May Allāh reward you abundantly, and console you and forgive your deceased.”

The one being consoled may say:

(أَمِينَ، أَجْرَكَ اللَّهُ، وَلَا أَرَاكَ مَكْرُوهًا)

*Aameen, aajarakal-laahu, wa laa araaka makruuhaa.*

“Ameen, may Allāh reward you bountifully, and may He remove any evil from you.”

## 9. Innovations Related to Consoling:

Of the deeds which should be shunned is the innovation of people gathering, out of ignorance, in homes and holding banquets, spending money as a form of boasting and haughtiness when giving condolences.

The righteous predecessors would not gather in homes for condolences, but they would console each other at the graveyards or when they randomly meet each other. There

is no harm, if one goes to his brother's house to console him if he could not console him in the graveyard or in the street. The innovated deed is that of the people gathering at a specific place for such occasion.

### 10. Doing Whatever Good One is Able for the Family of the Deceased:

It is recommended that the neighbors or near relatives prepare food for the family of the deceased. The Messenger of Allāh ﷺ said:

«اصْنَعُوا لِآلِ جَعْفَرٍ طَعَامًا، فَإِنَّهُ قَدْ أَتَاهُمْ أَمْرٌ يَشْغَلُهُمْ»

*«Prepare food for the family of Ja'far; since they have enough preoccupation.»* (Ahmad, At-Tirmithi and Al-Hakim, and is Sahih)

As for the practice of the family of the deceased preparing food for others, this is disliked, since it merely doubles their suffering. In case one whose entertainment is necessary, the relatives of the deceased and the neighbors can entertain them instead of the family of the deceased.

### 11. Giving Charity on Behalf of the Deceased:

Giving charity on behalf of the deceased is desirable. Muslim recorded that Abu Hurayrah, may Allāh be pleased with him, narrated that a man said: "O Messenger of Allāh! My father has died and left wealth but he did not leave a will. Does what I pay of charity atone (his sins)?" The Messenger of Allāh ﷺ said:

«نَعَمْ»

«Yes.»

When the mother of Sa'd bin 'Ubadah, may Allāh be pleased with them, died, Sa'd said to the Prophet: "O Messenger of Allāh! My mother has died, may I pay charity for her?" The Messenger of Allāh ﷺ said:

«نَعَمْ»



«Yes. »

He then asked: "Which charity is the best?" The Messenger of Allāh ﷺ said:

«سَقَى الْمَاءِ»

«Providing water to drink.» (Ahmad and An-Nasa'i and others)

## 12. Recitation of the Noble Qur'an for the Deceased:

There is no harm if the Muslim, while in the *Masjid* or in his home, recites some Qur'an. When he finishes his recitation, he asks for Allāh's forgiveness and mercy for the deceased, appealing to Allāh by his recitation.

As for people assembling in the house of the deceased to recite, and saying, "We have endowed the reward of our recitation to the deceased." This is an evil innovation that must be avoided. We have this opportunity to invite our Muslim brothers to refrain from it since it was never done by our righteous predecessors. None of the earlier virtuous generations before us reported it, and any act that was not done by the pioneers of this nation, will never in anyway be a religious practice for the coming generations.

## 13. Regulations for Visiting the Graves:

Visiting the grave is recommended because it reminds the Muslim of the Hereafter, and benefits the deceased with supplications and seeking forgiveness. The Messenger of Allāh ﷺ said:

«كُنْتُ نَهَيْتُكُمْ عَنْ زِيَارَةِ الْقُبُورِ فَزُورُوهَا فَإِنَّهَا تُذَكِّرُكُمْ بِالْآخِرَةِ»

«I had prohibited you from visiting the graves, (now), visit them; since this reminds you of the Hereafter.» (Muslim)

In case where the grave or the deceased is far away, and it would be necessary for a visitor to prepare for it traveling specifically to it, then in this case it becomes unlawful. The Messenger of Allāh ﷺ said:

«لَا تُنْذِرُ الرِّحَالَ إِلَّا إِلَى ثَلَاثَةِ مَسَاجِدَ: الْمَسْجِدِ الْحَرَامِ، وَمَسْجِدِي هَذَا،  
وَالْمَسْجِدِ الْأَقْصَى»

«No journey should be taken to any Masjid other than three Masjids: Masjid Al-Haram, this Masjid of mine, and Masjid Al-Aqsa.» (Al-Bukhari and Muslim)

#### 14. What the Visitor should say:

The Muslim should say what the Messenger of Allāh ﷺ used to say when visiting Al-Baqi' (the graveyard of Al-Madinah):

«السَّلَامُ عَلَيْكُمْ أَهْلَ الدِّيَارِ مِنَ الْمُؤْمِنِينَ وَالْمُسْلِمِينَ، وَإِنَّا إِنْ شَاءَ اللَّهُ بِكُمْ  
لَآحِقُونَ، أَنْتُمْ فَرَطُنَا وَنَحْنُ لَكُمْ تَبِعٌ، نَسْأَلُ اللَّهَ لَنَا وَلَكُمْ الْعَافِيَةَ. اللَّهُمَّ اغْفِرْ  
لَهُمْ، اللَّهُمَّ ارْحَمْهُمْ»

*As-Salaamu 'alaykum ahlad-diyaari minal-mu'mineen wal-muslimeen. Wa innaa in shaa' Allaahi bikum laahiquoon. Antum faratunaa wa nahnu lakum taba'un. Nasaalul-laaha lanaa wa lakumul-'aafiyah. Allaahumma-ghfirlahum, Allaahumma-rhamhum.*

«Peace be upon you, dwellers of these graves of the Muslims and the believers. We will join you when Allāh wills. You are our pioneers and we will be your followers. We ask Allāh's forgiveness for us and for you. O Allāh! Forgive them and have mercy on them.» (Muslim)

#### 15. The Ruling on Women Visiting Graves:

There is no difference of opinion among the people of knowledge regarding the prohibition of women frequently returning to graves for the purpose of visiting them. This is because of the Prophet's saying:

«لَعَنَ اللَّهُ زَوَارَاتِ الْقُبُورِ»

«May Allāh curse the women who visit the graves.»

As for infrequent visiting, some scholars disliked it, and

others permit it basing their view on what has been authentically narrated that 'A'ishah, may Allāh be pleased with her, visited her brother's ('Abdur-Rahman's) grave. When she was asked about it she said: "Yes, the Messenger had prohibited visiting of the graves, later, he permitted it." (Al-Hakim and Al-Baihaqi. Ath-Thahabi said it is *Sahih*)

The scholars who have permitted women to visit graves stipulated that she should not commit any wrongs such as wailing over the grave, crying, going there improperly dressed, or imploring the deceased for anything as done by many ignorant women in more than one place and time.

## Az-Zakah

### Legal Ruling

Allāh has obligated *Zakah* upon every Muslim who possesses a minimum amount of wealth, according to some conditions. Allāh made *Zakah* obligatory in His Book by His statement;

﴿خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا﴾

﴿Take from their wealth Sadaqah in order to purify them and sanctify them with it.﴾ (9:103)

And His statement:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ ثَمَرَاتِ مَا كَسَبْتُمْ وَمِمَّا أَنْزَلْنَا لَكُمْ مِنَ الْأَرْضِ﴾

﴿O you who believe! Spend from the good things which you have (legally) earned, and of that which We have produced from the earth for you.﴾ (2:267)

And His statement:

﴿وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ﴾

﴿And establish the prayer (Salah) and pay the obligatory charity (Zakah).﴾ (73:20)

*Zakah* was also made obligatory by the statement of the Messenger ﷺ:

«بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ: شَهَادَةٌ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَإِقَامُ الصَّلَاةِ، وَإِيتَاءُ الزَّكَاةِ، وَحَجُّ الْبَيْتِ، وَصَوْمُ رَمَضَانَ»

«Islam was built upon five (pillars): The testimony that none has the right to be worshipped but Allāh and Muhammad is the Messenger of Allāh, the establishment of the prayer (Salah), paying the obligatory charity (Zakah), pilgrimage to the House

(Hajj to the Ka'bah in Makkah) and fasting (the month of Ramadhan.) (Al-Bukhari and Muslim)

And his statement:

«أَمِرْتُ أَنْ أَقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ، إِلَّا بِحَقِّ الْإِسْلَامِ وَحِسَابُهُمْ عَلَى اللَّهِ»

*«I was commanded to fight the people until they testify that none has the right to be worshipped but Allāh and Muhammad is the Messenger of Allāh, establish the prayer and pay the obligatory charity (Zakah) If they do that, then they have protected their blood and wealth from me, except according to the right of Islam, and their reckoning is with Allāh.»* (Al-Bukhari and Muslim)

And his statement in advising Mu'adh when he sent him to Yemen:

«إِنَّكَ تَأْتِي قَوْمًا أَهْلَ كِتَابٍ، فَأَدْعُهُمْ إِلَى شَهَادَةِ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ، فَإِنْ هُمْ أَطَاعُوكَ لِذَلِكَ فَأَعْلِمُهُمْ أَنَّ اللَّهَ عَزَّ وَجَلَّ قَدْ افْتَرَضَ عَلَيْهِمْ خَمْسَ صَلَوَاتٍ فِي كُلِّ يَوْمٍ وَلَيْلَةٍ، فَإِنْ هُمْ أَطَاعُوكَ فَأَعْلِمُهُمْ أَنَّهُ قَدْ افْتَرَضَ عَلَيْهِمْ صَدَقَةً فِي أَمْوَالِهِمْ تُؤْخَذُ مِنْ أَغْنِيَائِهِمْ وَتُرَدُّ إِلَى فُقَرَائِهِمْ، فَإِنْ هُمْ أَطَاعُوكَ لِذَلِكَ فَإِيَّاكَ وَكَرَائِمَ أَمْوَالِهِمْ، وَأَنْتَ دَعْوَةُ الْمَظْلُومِ، فَإِنَّهُ لَيْسَ بَيْنَهَا وَبَيْنَ اللَّهِ حِجَابٌ»

*«Verily you are going to a people who are People of the Scripture, so invite them to the testimony that there is none worthy of worship but Allāh and I (Muhammad ﷺ) am the Messenger of Allāh. If they obey you in that, inform them that Allāh, the Mighty and Majestic, has obligated them to (pray) five prayers every day and night. If they obey you, then inform them that He has obligated them to give charity from their wealth that is to be taken from their wealthy and given to their poor. If they obey you in that, then stay away from (taking) the best of their wealth. And beware of the*

*supplication of the oppressed person, for verily there is no veil between it and Allāh.*» (Al-Bukhari and Muslim)

### **Its Wisdom**

The following are some of the points derived from the wisdom of legislating *Zakah*:

1. Purification of the human soul from the vices of stinginess, greed, covetousness and lustfulness.
2. Comforting the poor and fulfilling the needs of the needy, distraught and deprived people.
3. Establishing comprehensive benefits that the life of the Muslim community (*Ummah*) and its happiness depend upon.
4. Limiting the inflation of wealth among the wealthy, and at the hands of the businessmen and merchants. This is so that the wealth will not be restricted solely to one limited group of people, nor controlled by only the wealthy.

### **The Ruling of One Who Refuses to Pay *Zakah***

Whoever refuses to pay *Zakah*, while denying its obligation, has disbelieved. Whoever refuses to pay *Zakah* due to stinginess, while affirming its obligation, has committed a sin. In this case *Zakah* is taken from such a person by force and he is also given some disciplinary punishment. If he fights in refusing to give it, he is fought until he submits to the command of Allāh and pays *Zakah*. This is due to Allāh the Almighty's statement:

﴿إِن تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخِذُوا مِنْ يَدَيْهِمْ﴾

«So if they repent, establish the prayer and give *Zakah* then they are your brethren in religion.» (9:11)

This is also due to the Prophet's statement:

«أَمِرْتُ أَنْ أَقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنْ مُحَمَّدًا رَسُولُ اللَّهِ،

وَيَقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ،  
إِلَّا بِحَقِّ الْإِسْلَامِ، وَحِسَابُهُمْ عَلَى اللَّهِ»

*«I was commanded to fight the people until they testify that none has right to be worshipped but Allāh and Muhammad is the Messenger of Allāh, establish the prayer and pay Zakah. If they do this, then they have protected their blood and wealth from me, except by the right of Islam, and their reckoning is with Allāh.»* (Al-Bukhari and Muslim)

Likewise, concerning fighting those who refused to pay Zakah, Abu Bakr As-Siddiq said:

“By Allāh, if they refuse to give me (of Zakah) a young she-goat that they used to give to Allāh’s Messenger ﷺ, I will fight them for it.” (Al-Bukhari)

In this situation the Companions agreed with him (Abu Bakr) about this, so there was a consensus among them.

## **The Categories of Wealth that Zakah is Due Upon**

### **The Two Currencies:**

The two currencies are gold and silver, as well as whatever is used with them (in trade) of commercial merchandise, what is included with them of (precious) metals and buried treasure, and any type of paper money that takes their place. This is based upon Allāh’s statement:

﴿وَالَّذِينَ يَكْتُمُونَ الذَّهَبَ وَالْفِضَّةَ وَلَا ينفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ  
أَلِيمٍ﴾

﴿And those who hoard gold and silver and do not spend them in the way of Allāh, announce unto them a painful torment.﴾  
(9:34)

Also, the Messenger of Allāh ﷺ said:

«لَيْسَ فِيمَا دُونَ خُمُسٍ أَرَاقِي صَدَقَةٍ»

«There is no charity on that which is less (in value) than five Awaq.»<sup>[1]</sup> (Al-Bukhari and Muslim)

He also said:

«الْعَجَمَاءُ جُرْحُهَا جُبَارٌ، وَالْبُئْرُ جُبَارٌ، وَالْمَعْدِنُ جُبَارٌ، وَفِي الرِّكَازِ الْخُمْسُ»

«There is no compensation for a wound caused by a domestic animal, a well (falling in it), a mine (working in it), and one-fifth (for Zakah) is due on buried treasure.» (Al-Bukhari)

### Livestock Animals:

Livestock animals are camels, cattle and sheep. This is due to Allāh the Almighty's statement:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ﴾

«O you who believe, spend from the good things that you have earned.» (2:267)

And the statement of the Prophet ﷺ to the man who asked him about migration (Al-Hijrah):

«وَيَنَحْكَ إِنْ شَأْنَهَا شَدِيدٌ، فَهَلْ لَكَ مِنْ إِبِلٍ تُؤْذِي صَدَقَتَهَا؟»

«Woe unto you, verily its matter is severe. Do you have any camels that you pay charity for?» The man said, «Yes.»

The Prophet ﷺ said:

«فَاعْمَلْ مِنْ وَرَاءِ الْبَحَارِ، فَإِنَّ اللَّهَ لَنْ يَنْزِعَ مِنْ عَمَلِكَ شَيْئًا»

«Then do so from behind the seas, for verily Allāh will never disregard (decrease) anything of your deeds.» (Al-Bukhari)

And he ﷺ said:

«وَالَّذِي لَا إِلَهَ غَيْرُهُ مَا مِنْ رَجُلٍ تَكُونُ لَهُ إِبِلٌ أَوْ بَقَرٌ أَوْ غَنَمٌ، لَا يُؤْذِي زَكَاتَهَا إِلَّا أَتَى بِهَا يَوْمَ الْقِيَامَةِ أَعْظَمَ مَا تَكُونُ وَأَسْمَنَهُ نَطْرُهُ بِأَخْفَافِهَا وَتَنْطِجُهُ بِقُرُونِهَا كُلَّمَا جَارَتْ أَخْرَاهَا، رُدَّتْ عَلَيْهِ أَوْلَاهَا حَتَّى يُقْضَى بَيْنَ النَّاسِ»

[1] A measurement of silver, five of which is equivalent to 595 grams.



«By the One Whom there is no (true) god besides Him, there is no man who has camels or cows or sheep, and he does not pay their Zakah, except that they will be brought to him on the Day of Resurrection larger and fatter than they ever were. And they will trample him with their hooves and gore him with their horns. Every time the last of them passes, the first will be returned to him (to start over). This will continue until judgement is passed between all the people.» (Al-Bukhari)

### Fruits and Grains:

Grain is everything that is stored to be eaten, such as wheat, barley, beans, chickpeas, chickling vetch, peas, lentils, corn, rye, rice and the like.

Fruit includes dried dates, olives and raisins.

This is based upon Allāh the Almighty's statement:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَرْسَلْنَا لَكُمْ مِنَ الْأَرْضِ﴾

«O you who believe! Spend from the good things that you have earned and from what we have brought out for you from the earth.» (2:267)

And His statement:

﴿وَأْتُوا حَقَّهُ يَوْمَ حَصَادِهِ﴾

«And give its due on the day of its harvest.» (6:141)

Also, the Messenger of Allāh ﷺ said:

«لَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ صَدَقَةٌ»

«There is no charity on what is less than five Awsuq.<sup>[1]</sup>» (Al-Bukhari and Muslim)

And he ﷺ said,

«فِيمَا سَقَبَ السَّمَاءَ وَالْعُيُونُ، أَوْ كَانَ عَثَرِيًّا الْعُسْرُ، وَفِيمَا سُقِيَ بِالنَّضْحِ نَضْفُ»

[1] A measurement of fruit and grain, five of which is equivalent to 618 kilograms.

الْعُسْرِ

«On that which is watered by the sky (i.e. rain), natural springs, or it receives water that comes down from the mountains, a tenth (of Zakah) is due (i.e. 10%) On that which is watered by being sprinkled (by human efforts), a twentieth is due (i.e. 5%).» (Al-Bukhari)

## Wealth that does Not Require Payment of Zakah

1. Slaves, horses, mules, and donkeys. This is due to the Prophet's statement:

«لَيْسَ عَلَى الْعَبْدِ فِي فَرَسِهِ وَغُلَامِهِ صَدَقَةٌ»

«There is no charity due upon a servant (of Allāh) for his horse or his slave.» (Al-Bukhari)

Also, it has not been confirmed from the Prophet ﷺ that he ever took Zakah for mules and donkeys.

2. The wealth that does not reach the amount of *Nisab* (the minimum required amount for Zakah), unless its owner wishes to give extra from his own free will. This is due to the Prophet's statement:

«لَيْسَ فِيْمَا دُونَ خَمْسَةِ أَوْسُقٍ صَدَقَةٌ، وَلَيْسَ فِيْمَا دُونَ خُمْسِ أَوَاقٍ مِنَ الْوَرِقِ صَدَقَةٌ، وَلَيْسَ فِيْمَا دُونَ خُمْسِ دَوْدٍ مِنَ الْإِبِلِ صَدَقَةٌ»

«There is no charity due on what is less than five Awsuq, and there is no charity due on what is less than five Awaq of silver, and there is no charity due on what is less than five heads of camels.» (Al-Bukhari and Muslim)

3. Fruits and vegetables; there nothing is confirmed from the Messenger of Allāh ﷺ concerning their Zakah. However, it is still recommended to give something from them to the poor and the neighbors due to the generality of Allāh's statement:

«وَأَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ»

﴿And spend of the good things that you have earned and from what We have brought out for you from the earth.﴾ (2 :267)

4. Women's jewelry<sup>[1]</sup> if nothing is intended by them other than beautification. If the intention in having the jewelry is beautification along with a desire to keep the jewelry for a time of need, then it is obligatory to pay *Zakah* on it. This is because the intentions are similar to storing wealth.

5. Precious jewels, such as emeralds, corundum, pearls and other jewels, unless they are used for business. If they are being kept for business purposes (sale), then *Zakah* is obligatory upon them based upon their value, just like sales merchandise.

6. Items that are for personal use and not for business, such as furniture and similar things. Likewise, homes, factories and cars do not require payment of *Zakah*, because there is nothing reported from the Islamic sources regarding their *Zakah*.

[1] As for women's circular jewelry, *Zakah* is due in any case. 'A'ishah, may Allāh be pleased with her, said that the Prophet ﷺ saw decorative bracelets on her hands and asked :

«مَا هَذَا يَا عَائِشَةُ؟»

«What is this 'A'ishah?»

She responded, "I made them to look pretty for Messenger of Allāh." So he ﷺ asked :

«أَتُرَدِّينَ زَكَاتَهُنَّ؟»

«Has *Zakah* been paid for them?»

She said, "No." He said :

«هُوَ حَسْبُكَ مِنَ النَّارِ»

«It is sufficient of the Fire for you.»

## **The Minimum Amounts Eligible for *Zakah* and the Required Payment**

### **The Two Currencies (Gold and Silver) and whatever carries their Meaning:**

1. Gold: The condition of its *Zakah* payment is that one must possess it for the period of one year and it must reach a minimum amount (*Nisab*). Its minimum amount for eligibility of *Zakah* is twenty dinars. The amount that must be paid from it is 1/40th (i.e. 2.5%). Thus, for every twenty dinars, half a dinar is due for payment of *Zakah*, and whatever is more than that is calculated based upon this, whether it is a little or a lot.

2. Silver: Its conditions are that it must be possessed for a year and it must reach a minimum amount (*Nisab*), just like gold. The minimum amount for eligibility for silver is five *Awaq*, which is two hundred dirhams. The amount that must be paid from it is 1/40th (i.e. 2.5%), just like gold. Thus, for two hundred dirhams, five dirhams are due for *Zakah*, and any more than this is calculated based upon this calculation.

3. Whoever owns an amount of gold that does not reach the minimum amount for *Zakah* eligibility and he also owns an amount of silver that does not reach the minimum amount, he gathers them together (i.e. calculates their value together). If they reach the minimum value of *Zakah* (of either of them) he pays *Zakah* on both of them, each according to its rate. This is due to what has been reported from the Prophet ﷺ that he combined gold with silver, and silver with gold and paid *Zakah* on both of them.<sup>[1]</sup>

<sup>[1]</sup> Gathering the two currencies together in order to complete the minimum amount (*Nisab*) was the view (*Madh-hab*) of Malik and Abu Hanifah. The companions of Malik report this *Hadith* from Bukayr bin 'Abdullah bin Al-Ashajj: "The *Sunnah* has continued that the Prophet ﷺ used to combine gold with silver, and silver with gold and pay *Zakah* on both of them."

Likewise, it is acceptable to pay *Zakah* from one of the currencies for the other currency. Therefore, whoever has one dinar due upon him (for *Zakah*), it is permissible for him to pay ten dirhams of silver, and likewise the opposite is also correct. Similarly, today the paper money is used for paying *Zakah* for the two currencies (gold and silver) and its due is 1/40th (i.e. 2.5%), while at the same time, the account balances of paper money with the governments are made (determined) by gold and silver collectively.

4. Sales merchandise: These are either products that are to be sold immediately (*Al-Mudarah*) or items that are held (stored) until the price increases, at which time they will be sold (*Al-Muhtakirah*). If the merchandise is for immediate sale, its value is determined at the end of every year. If its value reaches the minimum amount (based upon the *Nisab* of currency) or it does not reach the minimum amount, and the person has some other money besides it (that he has had for a year), he adds them together and pays *Zakah* on them at the rate of 2.5%. If the merchandise is being stored, he pays their *Zakah* for only one year on the day that he sells them, even if they remained (in storage) with him for many years while he was waiting for their prices to go up.

5. Debts: Whoever has a debt that someone owes him and he is able to get it back whenever he wishes, it is obligatory upon him to include it in that which he has of currency or merchandise, and pay its *Zakah* whenever a year passes on it. If he does not have any currency other than the debt and the value of the debt reaches the minimum amount (*Nisab*), he pays the *Zakah* on it. Whoever is owed a debt by someone who is going through (financial) hardships, and he cannot retrieve his payment whenever he wishes, he pays its *Zakah* on the day he receives his payment for only one year, even if a number of years passed on the debt.

6. Buried treasure: This is the treasure that was buried in the Pre-Islamic Days of Ignorance (*Jahiliyyah*) Therefore,

whoever finds some buried wealth in his land or his home that was buried in the time before Islam, he must pay *Zakah* on it by giving 1/5th (20%) of it to the poor, the needy and the charitable organizations. This is due to the Prophet's statement:

«فِي الرِّكَازِ الْخُمْسُ»

«A fifth (20%) is due (for *Zakah*) on buried treasure.» (Al-Bukhari and Muslim)

7. Minerals: If the mineral is gold or silver, the person pays *Zakah* on what he extracts of it if it reaches the minimum *Nisab* amount. It makes no difference whether a year has passed on the mined material or not. For it is obligatory for the miner to pay *Zakah* on the total sum of everything that he extracts whenever it reaches the *Nisab* amount. The question remains, does he pay 1/40th (2.5%) from it or does he pay 1/5th (20%) like buried treasure? The people of knowledge (i.e. the scholars of Islam) have differed concerning that. Those who say that the mined minerals have 1/5th (20%) due on them for *Zakah*, draw a comparative analogy between mines and buried treasure. Those who say that the *Zakah* due on mined minerals is the same *Zakah* that is due on the two currencies (gold and silver, i.e. 2.5%) have taken (as their evidence) the generality of the Prophet's statement:

«وَلَيْسَ فِيْمَا دُونَ خَمْسِ أَوَاقٍ مِنَ الْوَرَقِ صَدَقَةٌ»

«There is no charity due on what is less than five *Awaq*» (Muslim)

His statement, "five *Awaq*" includes minerals and other things as well. This is an extensive matter and all praises are due to Allāh.

However, if the mineral is iron or copper or sulfur or other than it, it is recommended to pay *Zakah* on what is extracted of it at a rate of 2.5% of its total value. This is because a clear text has not been reported concerning the

obligatory amount of *Zakah* due on it, and it is not gold or silver on which *Zakah* must be paid.

8. Gained wealth: If the wealth is what is considered gained wealth, such as business profit or offspring of animals, the owner should pay its *Zakah* according to the *Zakah* of its origin (i.e. that which it resulted from), and he does not consider the passing of a year on it. If the gained wealth is not from business profit or offspring of animals he considers it if it reaches the minimum amount (*Nisab*) and a complete year has passed on it, then he pays its *Zakah*. Whoever has been given some wealth (as a gift) or he inherits it, there is no *Zakah* due on it until a complete year passes on it.

### **Livestock Animals:**

1. Camels: The conditions of their *Zakah* is that they are possessed for a complete year and their amount reaches the minimum amount required for *Zakah*. The minimum number of camels required before *Zakah* is due on them is five or more. This is due to the Prophet's statement:

«لَيْسَ فِيمَا دُونَ خَمْسٍ ذَوْدٌ صَدَقَةٌ»

«There is no charity due on less than a *Dhawd*<sup>[1]</sup> of camels.»

(Al-Bukhari)

The amount of *Zakah* that is due on five camels is one young ewe (female sheep) that has completed a year in age and has entered into its second year from the usual type of sheep that are given as *Zakah*. It does not matter whether it is a goat or a regular sheep. Two sheep are due as *Zakah* on ten camels. Three sheep are due on fifteen camels. Four sheep are due on twenty camels. One *Bint Makhadh* is due on twenty-five camels, that is a she-camel that has completed one year of age and entered into its second year. If a *Bint Makhadh* cannot be found, one *Ibn Labun* is

[1] A *Dhawd* is used to mean a number of camels between three and ten.

acceptable instead, which is a male camel that has completed two years in age and has entered its third year. If the number of camels reaches thirty-six, one *Bint Labun* (2-year-old female camel). If the number of camels reaches forty-six, a *Hiqqah* (female camel) that has completed three years of age and entered her fourth (i.e. a 3-year-old) is due. If the number of camels reaches sixty-one, then one *Jadh'ah* (she-camel) that has completed four years of age and entered its fifth year (i.e. a 4-year-old) is due. If the number of camels reaches seventy-six, two *Bint Labun* camels (two 2-year-old female camels) are due. If the number of camels reaches ninety-one, two *Hiqqahs* (3 year-old female camels) are due. If the number of camels reaches one hundred and twenty, for every forty, one *Bint Labun* (2-year-old female camel) is due, and for every fifty, one *Hiqqah* (3-year-old female camel) is due.

**Note:** If the *Zakah* due requires an animal of a particular age as a payment, but he does not have it, then he gives an animal he has, whatever the age. If it is a younger age than what is sought, he should pay the *Zakah* collector two extra sheep or twenty dirhams. If the animal he gives is older than the age sought, the *Zakah* collector returns to him two sheep or twenty dirhams. This is in order to make up for the deficiency. The *Ibn Labun* (2-year-old male camel) is an exception, because it is acceptable in place of the *Bint Makhadh* without any increase as was mentioned earlier.

2. Cattle: The condition for cattle is that they have been in possession for a complete year and they reach the minimum amount (*Nisab*), just like with the camels. The minimum number of cattle that require payment of *Zakah* is thirty head. The amount of *Zakah* due on them is a *Tabi'* calf, which is a calf that has completed one year of age. If the number of cattle reaches forty, a *Musinnah* cow is due, which is a cow that has completed two years of age. If the number of cattle increases, for every forty, one *Musinnah* (2-year-old) is due, and for every thirty, one calf (1-year-old) is due. This is due to the statement of the Prophet ﷺ:



«فِي كُلِّ ثَلَاثِينَ تَبِيعٌ، وَفِي كُلِّ أَرْبَعِينَ مُسِنَّةٌ»

*«For every thirty (cows) a Tabi' (1-year-old) calf is due and for every forty (cows) a Musinnah (2-year-old) cow is due.»* (Abu Dawud, At-Tirmithi, Ibn Hibban, who graded it *Sahih*, and Al-Hakim)

3. Sheep: this means regular sheep and as well as goats. The conditions for their *Zakah* is that they must be possessed for a complete year and they must reach the minimum required amount (*Nisab*). The minimum number of sheep required for payment of *Zakah* is forty head, in which case one sheep is due. If the number of sheep reaches one hundred and twenty-one, two sheep are due. If the number of sheep reaches two hundred and one or more, three sheep are due. If the number of sheep is more than three hundred, one extra sheep is due for each one hundred sheep (after three hundred). This is due to the Prophet's statement:

«فَإِذَا زَادَتْ فِي كُلِّ مِائَةٍ شَاةٌ»

*«If they are more (than three hundred), one sheep is due for every one hundred.»* (Abu Dawud and others)

### Notes of Importance:

1. The majority of scholars have stipulated that livestock must be allowed to graze. This means that the animals must be allowed to graze during most of the year upon the general grasses in the open grazing areas. However, Imam Malik, may Allāh have mercy upon him, did not make this a condition for the obligation of paying *Zakah*. This (view) was also the customary practice of the people of Al-Madinah. The proof of the majority is in the statement of the Prophet ﷺ,

«وَفِي سَائِمَةِ الْعَتَمِ إِذَا كَانَتْ أَرْبَعِينَ فَيَبِيعُ شَاةً إِلَى عَشْرِينَ وَمِائَةً»

*«And on the sheep that are allowed to graze, if they are forty in number, one sheep is due (as Zakah), until their number*

*reaches one hundred and twenty-one.*»

Thus, in his saying:

«وَفِي سَائِمَةِ الْغَنَمِ»

«And on the sheep that are allowed to graze.»

From this the majority extract the proof that grazing is a condition for the requirement of *Zakah* on livestock animals. They base their ruling for sheep on the clear wording of the text (i.e. this *Hadith*) and they compare camels and cows to sheep by way of analogy. They say, "In the difficulty of providing fodder and its financial burden is that which makes grazing a considered stipulation (for requiring *Zakah*)."

2. There is no *Zakah* due on *Al-Awqas* from all the types of livestock. *Awqas* is the plural of *Waqas*, and it means that which is between two obligations. Therefore, he who owns forty sheep must give one sheep as *Zakah* until their number reaches one hundred and twenty. If he has one more (i.e. one hundred and twenty-one) then he must give two sheep as *Zakah*. Thus, the number of sheep between forty and one hundred and twenty is called *Waqas*, and there is no *Zakah* due on them. The same applies to the *Awqas* of camels and cows. The reason for this is that when the Prophet ﷺ mentioned the obligations of *Zakah* on livestock, he would say:

«إِذَا بَلَغَتْ كَذَا فَبِئَهَا كَذَا»

«If they reach such and such (in number), such and such amount is due on them.»

Therefore, it is known that the numbers of animals between the two amounts requiring payment, do not require payment of *Zakah*.

3. Combinations in *Zakah*: Sheep are included with goats because they are considered one species. Likewise, buffalo are counted among cows, and Arab camels are counted

among the *Bukht* camels (Bactrian camels), [*Bukht* camels are camels from Khurasan (a province in North East Iran) that have two humps] because the wording includes the species of the animals in the Prophet's statement:

«وَفِي سَائِمَةِ الْغَنَمِ إِذَا كَانَتْ أَرْبَعِينَ فَفِيهَا شَاةٌ إِلَى عِشْرِينَ وَمِائَةً»

«And on the sheep (Ghanam) that are allowed to graze, if they reach forty (in number), a sheep (Shah) is due (as Zakah) on them.»

And his statement:

«فِي كُلِّ خَمْسٍ دَوْدٌ شَاةٌ»

«For every five Dhawd (camels) a sheep (Shah) is due (as Zakah).»

And his statement:

«فِي كُلِّ ثَلَاثِينَ مِنَ الْبَقَرِ»

«For every thirty (head) from the cattle.»

4. Two people whose animals are mixed together, if both of them possess the minimum amount (*Nisab*) of animals, and they have the same shepherd, the same grazing field, the same stable, and the same resting place (barn, stall, etc.), *Zakah* is taken from them together. Then they make sure that they settle things between themselves equally. For example, if one of them owns forty sheep, and the other owns eighty sheep (i.e. a total of one hundred and twenty sheep), and the *Zakah* collector takes the one sheep (that is due on one hundred and twenty) from the sheep of the man who owns forty sheep, the man who owns eighty must give (the price of) two thirds of a sheep to the man who owns forty sheep. This is how it is done, and it is not permissible to combine between two sets of sheep (owned by two different owners) that are kept separate in order to escape paying *Zakah*. Likewise, it is not permissible to separate two sets of sheep that are kept together. This is due to what

has been reported in the letter of Abu Bakr As-Siddiq (may Allāh be pleased with him):

“Two flocks (or herds of animals) that are kept separately are not to be combined (for *Zakah* determination), and two flocks (or herds) that are kept together are not to be separated (for *Zakah* determination), due to fear of (having to pay) the charity. And what is between two owners whose animals live together, then they must review matters between themselves to make things equal.” (Al-Bukhari and Malik)

5. The lamb is not accepted as payment of *Zakah* for sheep, nor calves for cows, nor calves for camels. However, they are counted among their fellow livestock animals (for determining *Zakah*). This is based upon the statement of ‘Umar, may Allāh be pleased with him, to the *Zakah* collector:

“Count the lamb among their animals, but do not take them (as *Zakah* payment).” (Malik in *Al-Muwatta’*)

6. The extremely aged and the defective animals whose defect decreases their value are not taken as payment for *Zakah*. This is based on the statement of Abu Bakr, may Allāh be pleased with him:

“The old animal, the defective animal and the billy goat (male-goat) are not taken (as payment) for charity.” (Al-Bukhari, An-Nasa’i and Ibn Majah)

Likewise, the best of wealth is not to be taken, such as the *Makhidh*, which is the pregnant animal that is close to the time of delivery, and the *Fahl* (the strong male animal used for studding) and the sheep that has been fattened for eating. Also, the female animal that is caring for her infant (calf or lamb) should not be taken. This is due to the Prophet’s statement to Mu’adh:

«إِيَّاكَ وَكَرَائِمَ أَمْوَالِهِمْ»

“Stay away from (taking) the best of their property.” (Al-

Bukhari and Muslim)

This is also due to 'Umar's prohibiting the *Zakah* collector from taking the sheep that was kept aside so that it can become fat for eating, the sheep that is kept in the house for milking, the sheep that is pregnant and close to her delivery, and male sheep.

### **Fruit and Grain:**

The condition (for *Zakah*) of grain and fruit is that the fruit must ripen - turn yellow or red - and the grain must begin peeling, and the grapes and olives must be good. This is due to Allāh the Almighty's statement:

﴿وَأَتُوا حَقَّهُ يَوْمَ حَصَادِهِ﴾

﴿And pay its due on the day of its harvest.﴾ (6:141)

The minimum amount required (*Nisab*) for payment of *Zakah* is five *Awsuq*. A *Wasq* (the singular of *Awsuq*) is sixty *Sa'* and a *Sa'* is four *Amdad* (plural of *Mudd*). This is due to the statement of the Prophet ﷺ:

«لَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ صَدَقَةٌ»

«There is no charity due on what is less than five *Awsuq*.» (Al-Bukhari and Muslim)

The obligatory amount that is due on it (the crop) if it was watered without any financial burden on the owner - like crops that only get natural water from the earth through the roots, or by natural springs, or by rivers - is 1/10th (i.e. 10%). Thus, if one has five *Awsuq*, the *Zakah* that is due is half of a *Wasq*. If the crops are watered at the expense (of the owner) by buckets, waterwheels and other similar methods, then 1/20th (i.e. 5%) is due as *Zakah*. Thus, a fourth of a *Wasq* is due in *Zakah* for five *Awsuq*. Whatever is more than this is to be calculated in this manner, whether the amount is a little or a lot. This is based on the Prophet's statement:

«فِيْمَا سَقَّتِ السَّمَاءُ وَالْعُيُونُ أَوْ كَانَ عَرِيًّا الْعُشْرُ وَفِيْمَا سُقِيَ بِالنُّضْحِ نِصْفُ الْعُشْرِ»

«On that which receives water from the sky (i.e. rain), natural springs or unirrigated crops that only receive water from moisture in the soil, a tenth (10%) is due (as Zakah). On that which is watered by sprinkling (by man), half of a tenth (5%) is due (as Zakah).» (Al-Bukhari and Muslim)

### Important Notes:

1. Whoever waters his crops once with some tool (bucket, water hose, irrigation, etc.) and once without any tool (i.e. man made intervention), then his obligatory payment of *Zakah* is 3/4th of 1/10th (i.e. 7.5%). This has been said by the people of knowledge (i.e. the scholars of Islam). 'Allamah Ibn Qudamah said, "We do not know of any difference of opinion concerning this."
2. Different types of dates are brought together (for collective calculation of *Zakah*). If the total amount reaches the minimum requirement (*Nisab*), *Zakah* is paid from those of medium quality between them. Their payment should not be taken specifically from those of better or inferior quality.
3. Wheat, barley and rye are gathered together (for collective calculation of *Zakah*). If the total amount reaches the minimum requirement (*Nisab*), *Zakah* is paid from the type that is the most.
4. The various types of staple foods, such as beans, chickpeas, lentils, chickling vetch, and lupine, are gathered together and if their total amount reaches the minimum requirement (*Nisab*), *Zakah* is paid from the type that is the most.
5. If each of the olives or radishes or sesame reach the minimum amount required (*Nisab*), *Zakah* is paid from their oil (olive oil, sesame oil, etc.)
6. The different types of grapes are gathered together (for

calculation of *Zakah*), so if the total amount reaches the minimum required (*Nisab*), their *Zakah* must be paid. If they are sold before they become raisins, *Zakah* is taken from their price, and it is 1/10th (10%) or 1/20th (5%) depending upon how they were watered.

7. Rice, corn, and millet are each considered a single, independent type of grain, so they are not gathered together (for the calculation of *Zakah*). If a type of them does not meet the minimum requirement (by itself), then no *Zakah* is due on it.

8. Whoever rents a land and farms it, and the harvest reaches the minimum amount required (*Nisab*), it becomes obligatory on him to pay its *Zakah*.

9. Whoever owns fruit or grains in any manner of ownership, whether it was given as a gift, bought or inherited, and he acquires them after they have ripened, *Zakah* is not due from him on it. *Zakah* in such a case is due on the person who gave it or sold it. If he came into possession of it before its ripening, the payment of its *Zakah* is due on him (the new owner).

10. Whoever has a debt that takes up all of his wealth or it decreases his wealth to below the minimum required amount (*Nisab*), there is no *Zakah* due on him.

### The Recipients of *Zakah*

The recipients of *Zakah* are eight. Allāh the Mighty and Majestic mentions them in His Book (the Qur'an), as He says:

﴿إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبِهِمْ وَفِي الرِّقَابِ  
وَالْفَتَرَمِينَ وَفِي سَبِيلِ اللَّهِ وَأَيُّ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ﴾

﴿Verily the Sadaqat (*Zakah*) are only for the poor and the needy and those employed to collect (the funds); and to attract the hearts of those who have been inclined (towards Islam); and

to free the captives; and for those in debt; and for Allāh's cause, and for the wayfarer; a duty imposed by Allāh. And Allāh is All-Knower, All-Wise. ﴿9:60﴾

### Explanation:

The explanation of these eight categories of people is as follows:

1. *Al-Fuqara'* (The Poor): The *Faqir* (singular of *Fuqara'*) is the person who does not have sufficient wealth to fulfill his needs and the needs of his dependents, such as food, drink, clothing and housing. He may be considered poor (according to his situation) even though he may possess the minimum amount required for payment of *Zakah* (i.e. *Nisab*).

2. *Al-Miskin* (The Needy): The *Miskin* (needy) maybe someone whose level of poverty is more or less than the *Faqir*. However, their ruling is the same in all matters. The Messenger of Allāh ﷺ defined the *Miskin* in some of his *Hadiths*. He said:

«لَيْسَ الْمِسْكِينُ الَّذِي يَطُوفُ عَلَى النَّاسِ تَرُدُّهُ اللَّفْمَةُ وَاللُّقْمَتَانِ، وَالْتَمَرَةُ وَالْتَمَرَتَانِ، وَلَكِنَّ الْمِسْكِينَ الَّذِي لَا يَجِدُ غِنًى يُغْنِيهِ، وَلَا يُفْطِنُ لَهُ فَيَتَصَدَّقَ عَلَيْهِ وَلَا يَقُومُ فَيَسْأَلَ النَّاسَ»

«The *Miskin* (needy) is not the one who goes around among the people (begging) maybe receiving a morsel or two, and a date or two. Rather, the *Miskin* (needy) is the one who does not have enough wealth to suffice him, however he does not let others know about it in order to be given charity and he does not stand and beg from the people.» (Al-Bukhari)

3. *Al-'Amilun 'Alayhi* (Those who are involved with its work): The one who works with *Zakah* is the person who collects it or the person who goes around gathering it, or he is responsible for maintaining it, or he is the scribe who records it in its register. Such a person is given a wage for his work from it (the *Zakah*), even if he is wealthy. This is



based upon the statement of the Prophet ﷺ:

«لَا تَجِلُّ الصَّدَقَةُ لِغَنِيِّ إِلَّا لِخَمْسَةٍ: لِعَامِلٍ عَلَيْهَا، أَوْ رَجُلٍ اشْتَرَاهَا بِمَالِهِ، أَوْ غَارِمٍ، أَوْ غَازٍ فِي سَبِيلِ اللَّهِ، أَوْ مُسْكِينٍ تُصَدَّقَ عَلَيْهِ مِنْهَا فَأَهْدَى مِنْهَا لِغَنِيٍّ»

«Charity is not permissible for a wealthy person, except for five: The one who works with it, or a man who buys it with his wealth, or one who is indebted, or one who is setting out to fight (Jihad) in the Way of Allāh, or a poor person who is given charity from it (Zakah) and then he gives some of it to a wealthy person as a gift.» (Ahmad, Abu Dawud, Ibn Majah and Al-Hakim said that it is *Sahih*, and it has the deficiency of being *Mursal*)

4. *Al-Mu'allafah Qulubuhum* (Those whose hearts are to be reconciled with faith): *Al-Mu'allaf Qalbu* is the Muslim man whose Islam is weak and he has a strong influence among his people. Thus, he is given from *Zakah* in order to appease his heart and gather him (firmly) upon Islam. This is in hopes that comprehensive benefit may be gained from him or his evil restrained. *Zakah* may also be given to a man who is a disbeliever in hopes that he will accept *Iman* (faith in Islam) or that his people may accept faith. Thus, such people are given from *Zakah* in order to encourage them to accept Islam and endear them to it.

This share may be expanded to include every similar situation that will bring about a general benefit for Islam and the Muslims from aspects of propaganda, like some of the men who work with newspapers and writers.

5. *Ar-Riqab* (The slaves): The intent of this category of recipient (of *Zakah*) is that the Muslim who is a slave is purchased from *Zakah* (funds) and freed in the way of Allāh (i.e. solely for Allāh's Pleasure). It also applies to the Muslim who is an indentured servant (i.e. he has a contract with his owner to purchase his freedom). Such a person may be given from *Zakah* that which will help him to fulfill his contract and thus become a freeman after that.

6. *Al-Gharimun* (Those indebted): *Al-Gharim* is the person who owes a debt that he did not acquire through disobedience to Allāh and His Messenger ﷺ, and it has become impossible for him to pay it off. Such a person is given the amount which will allow him to pay off his debt from *Zakah*. This is due to the statement of the Prophet ﷺ:

«لَا تَجُلُ الْمَسْأَلَةَ إِلَّا لِثَلَاثٍ: لِذِي فَقْرٍ مُذْقِعٍ، أَوْ لِذِي غُرْمٍ مُفْطِعٍ أَوْ لِذِي دَمٍ مُوجِعٍ»

«The matter is not permissible, except for three: For the person who is extremely poor, or the person who has severe debt, or the person who possess a (debt of) blood (money).» (At-Tirmithi, who said it is *Hasan*, and Abu Dawud)

7. *Fi Sabilillah* (In the way of Allāh): The intent of *Sabilillah* (the way of Allāh) is the deed that helps one to achieve the Pleasure of Allāh and His Gardens (of Paradise). The most specific form of it is *Al-Jihad* (religious fighting) in order to elevate the Word of Allāh the Most High. Hence, the one who goes out to fight in the way of Allāh is given (from *Zakah*), even if he is wealthy. This share (of *Zakah*) also includes other comprehensive benefits that are legislated (by Islamic Law), such as building *Masjids*, hospitals, schools and shelters for orphans. However, that which is given precedence is *Al-Jihad*, such as preparing weapons, provisions, men (soldiers) and the other requirements of *Al-Jihad* and battle in the way of Allāh the Most High.

8. *Ibnus-Sabil* (Wayfarer): *Ibnus-Sabil* is the traveler who is cut off from his land, being far away from it. So he is given from *Zakah* that which will fulfill his need as a stranger, even if he is a wealthy man in his homeland. This is due to the poverty he is experiencing in his journey and being cut off from his resources. This is the case when there is no one who can give him a loan that will be of assistance to him in fulfilling his needs. If there is someone who can give him a loan, then he is obligated to take the loan and he is not given *Zakah* as long as he is considered a wealthy man

in his own land.

### Notes:

1. If a Muslim pays *Zakah* of his wealth to any one of the eight categories of (eligible) recipients, then that is sufficient. However, he should give precedence to those recipients who are most important and have a greater need. If the wealth for *Zakah* is abundant, and it is distributed to every category of recipients that exist from the eight categories, then that is better.

2. *Zakah* is not paid to those whom it is obligatory upon the Muslim to spend on, like the parents, the children, even if they become extremely poor, and the wife, because it is obligatory upon him to spend on them whenever they have needs that require spending.

3. *Zakah* is not given to the family of the Prophet ﷺ due to their nobility. They are Banu Hashim, the family of 'Ali, the family of Ja'far, the family of 'Aqil, and the family of Al-'Abbas. This is due to the Prophet's statement:

«إِنَّ الصَّدَقَةَ لَا تَتَّبِعِي لِأَلِ مُحَمَّدٍ ﷺ، إِنَّمَا هِيَ أَوْسَاحُ النَّاسِ»

*«Verily charity is not befitting for the family of Muhammad. It is only the impurities of the people.»* (Muslim)

4. It is sufficient for the Muslim to pay *Zakah* of his wealth to the Muslim leader, even if he is a tyrant. In this way, he absolves himself of its responsibility. This is due to the Prophet's statement concerning *Zakah*:

«إِذَا أَدَيْتَهَا إِلَى رَسُولِي فَقَدْ بَرَأْتَ مِنْهَا فَلَكَ أَجْرُهَا، وَإِنَّمَا عَلَى مَنْ بَدَّلَهَا»

*«If you give it to my messenger (i.e. the Zakah collector), then you are free of it and get its reward, and its sin is upon whoever changes (i.e. misappropriates) it.»* (Ahmad)

5. *Zakah* is not given to a disbeliever, nor a sinful person, like the one who does not pray (*As-Salah*) and the one who disrespects the symbols of Islam.

This is due to the Prophet's statement:

«تُؤْخَذُ مِنْ أَغْنِيَائِهِمْ وَتُرَدُّ إِلَى فَقَرَائِهِمْ»

«It (Zakah) is taken from their wealthy and given to their poor.» (Al-Bukhari and Muslim)

Meaning the wealthy people of the Muslims and their poor people. It is also not given to the wealthy person, nor the strong person who is capable of earning (i.e. working) This is due to the Prophet's statement:

«لَا حَظَّ فِيهَا لِغَنِيِّ، وَلَا لِقَوِي مُكْتَسِبٍ»

«There is no share in it for the wealthy, nor the strong person who is capable of earning (i.e. working).» (Ahmad, and he said it was strong)

This means the person who is capable of earning an amount that is sufficient for him.

6. It is not permissible to transport *Zakah* from one land to another distant land, whether the distance is considered short or greater than that. This is due to the Prophet's statement:

«تُرَدُّ عَلَى فَقَرَائِهِمْ»

«It (Zakah) is to be given to their poor.»

The people of knowledge (i.e. scholars of Islam) have made an exception if there are no poor people in a land, or the need (to send *Zakah* somewhere else) is more serious. In such a case it is permissible to transfer *Zakah* to another land that has poor people. The Imam (Muslim leader) or someone else does this.

7. Whoever has a debt that is owed to him by a poor person and he wants to make it a part of his *Zakah*, that is permissible if he requests it from the poor person so that he will commit himself to repaying the debt to him. However, if the poor person is not able to repay the debt or he repays it to him in order for him to return it to him (as

*Zakah*), then this is not permissible.

8. *Zakah* is not acceptable except with its intention. If a person pays it without having the intention of paying the obligatory *Zakah*, it will not suffice him. This is due to the Prophet's statement:

«إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَلِكُلِّ امْرِئٍ مَا نَوَىٰ»

«Deeds are judged by their intentions, and every person will get what he intended.» (Al-Bukhari)

Therefore, the one who pays it must do so with the intention of the *Zakah* that is obligatory for him to pay upon his wealth. He should also make his intention to pay it solely for the Face of Allāh the Most High, as sincerity of intentions is a condition for the acceptance of every act of worship. This is due to Allāh the Almighty's statement:

﴿وَمَا أُمِرُوا إِلَّا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ﴾

«And they were not commanded (anything) except that they worship Allāh, making their religion solely for Him (alone).» (98:5)

## **Zakat-ul-Fitr**

### **It Ruling**

*Zakat-ul-Fitr* is a Sunnah that is obligatory upon every individual Muslim. This is due to Ibn 'Umar's statement, may Allāh be pleased with him:

“The Messenger of Allāh ﷺ made *Zakat-ul-Fitr* obligatory during Ramadhan as one *Sa'* of dried dates or one *Sa'* of barley upon the slave and the free man, the male and the female, and the young and the old of the Muslims.” (Al-Bukhari and Muslim)

### **Its Wisdom**

From the wisdom of *Zakat-ul-Fitr* is that it purifies the fasting

soul from the effects of useless, non-beneficial speech (or acts) and obscene speech (or behavior). Likewise, it keeps the poor and needy people from having to beg on the day of 'Eid. Ibn 'Abbas, may Allāh be pleased with him, said:

"The Messenger of Allāh ﷺ made *Zakat-ul-Fitr* obligatory as a purification for the fasting person from useless, non-beneficial speech (or acts) and obscene speech (or behavior), and as a means of feeding the poor." (Abu Dawud and Ibn Majah, and it was graded *Sahih* by Al-Hakim).<sup>[1]</sup>

The Prophet ﷺ also said:

«أَغْنَوْهُمْ عَنِ السُّؤَالِ فِي هَذَا الْيَوْمِ»

«Keep them (the poor) from having to beg on this day.» (Al-Bayhaqi and its chain of narration is weak)

### **The Amount and Type of Food**

The amount of *Zakat-ul-Fitr* is a *Sa'*, and a *Sa'* is four *Amdad* (cupped handfuls). It is given from the usual staple foods of the people of the land, whether it is wheat, or barley, or dried dates, or rice, or raisins or cheese. This is due to the statement of Abu Sa'id (may Allāh be pleased with him):

"When the Messenger of Allāh ﷺ was among us, we used to give *Zakat-ul-Fitr* on behalf of every person, young and old, free or owned (i.e. a slave), as a *Sa'* of *Ta'am*,<sup>[2]</sup> or a *Sa'* of cheese (dried milk) or a *Sa'* of barley or a *Sa'* of dried dates, or a *Sa'* of raisins." (Al-Bukhari and Muslim)

### **It is Only given from items of Food**

It is obligatory that *Zakat-ul-Fitr* be given from the types of

[1] The remainder of it states: "So whoever gives it before the prayer (*Salat-ul-Eid*), then it is an accepted *Zakah*, and whoever gives it after the prayer (*Salat-ul-Eid*), then it is charity (*Sadaqah*) from the charities."

[2] The meaning of *Ta'am* is millet or corn.

food. Money should not be given in place of it, except if there is a pressing need to do so. This is because it is not confirmed that the Prophet ﷺ gave money for it in place of food. It has not even been reported from the Companions that they gave money (for *Zakat-ul-Fitr*).

### Its Time

*Zakat-ul-Fitr* becomes obligatory with the coming of the night of the 'Eid (i.e. the night before the 1st of Shawwal). It is to be paid a day or two before the day of the 'Eid, as Ibn 'Umar used to do, and the time of giving generosity, which is from the time *Fajr* comes in on the day of the 'Eid until just before the prayer (*Salat-ul-'Eid*). This is due to the Prophet's ﷺ command that *Zakat-ul-Fitr* be given before the people come out to the prayer. Ibn 'Abbas, may Allāh be pleased with him, said:

"The Messenger of Allāh ﷺ made *Zakat-ul-Fitr* obligatory as a purification for the fasting person from useless, non-beneficial speech (or acts) and obscene speech (or behavior), and as a means of feeding the poor. So whoever gives it before the prayer (*Salat-ul-'Eid*), then it is an accepted *Zakah*, and whoever gives it after the prayer (*Salat-ul-'Eid*), then it is a form of charity (*Sadaqah*)." (It has been mentioned previously.)

The time of making it up (i.e. paying it late) is after the 'Eid prayer and anytime thereafter. *Zakat-ul-Fitr* may be given during this time (following the prayer) and it is acceptable, however it is disliked (to give it late).

### Its Recipients

The recipients of *Zakat-ul-Fitr* are the same as the recipients of the general *Zakat*, except that the poor and the needy have more right to it than the other people who have a share in it. This is based upon the Prophet's statement:

«أَغْنَوْهُمْ عَنِ السُّؤَالِ فِي هَذَا الْيَوْمِ»

«Keep them from having to beg on this day.» (Al-Bayhaqi and its

chain of narration is weak)

Therefore, it is not given to other than the poor, unless there are no poor people or their poverty is light (i.e. not severe) or the need of others besides them, who have a share in it, has become severe.

### Important Notes:

1. It is permissible for a wealthy woman to pay her *Zakah* to her husband, who is poor, however the opposite is not permissible. This is because the maintenance of the woman is obligatory upon the man and the maintenance of the man is not obligatory upon the woman.
2. *Zakat-ul-Fitr* is not required from one who does not possess a day's worth of food, as Allāh does not burden a soul except with what it can bear.
3. Whoever possesses more than a day's worth of food and he gives it (as his *Zakat-ul-Fitr*), this will suffice him. This is due to Allāh's statement:

﴿فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ﴾

﴿So fear Allāh as much as you are able.﴾ (64:16)

4. It is permissible to give the charity of an individual to a number of people, distributing it among them, and it is permissible to give the charity of a number of individuals to one individual, as the giving of charity is mentioned in the *Shari'ah* in unrestricted terms.
5. The *Zakat-ul-Fitr* is obligatory upon the Muslim in the land in which he resides.
6. It is not permissible to transfer *Zakat-ul-Fitr* from one land to another, except if there is a pressing need. Its situation is the same as *Zakah*.



## **As-Siyam (Fasting)**

### **Defining Fasting (As-Sawm):**

As-Sawm (fasting) linguistically means to abstain. According to religious law it means to abstain from eating, drinking, sexual intercourse with women and other things that break the fast, with the intention of worshipping (Allāh) from the first crack of dawn (*Fajr*) until the setting of the sun (*Maghrib*).

### **The History of the Obligation of Fasting:**

Allāh the Mighty and Majestic made fasting obligatory upon the *Ummah* (nation, followers) of Muhammad ﷺ, just as He made it obligatory upon the nations that preceded it. This is based on Allāh the Almighty's statement,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِن قَبْلِكُمْ لَكُمْ

تَنفُوتٌ﴾

﴿O you who believe! Fasting has been made obligatory upon you just as it was made obligatory upon those who were before you, so that you may have Taqwa (piety).﴾ (2:183)

This (the revelation of this verse) took place on a Monday, during the month of Sha'ban, in the second year after the blessed migration (2 AH).

### **The Virtue of Fasting and its Benefits**

#### **Its Virtue**

The following *Hadiths* testify to and affirm the virtue of fasting:

The Prophet's statement:

«الصَّيَامُ جُنَّةٌ مِنَ النَّارِ، كَجُنَّةِ أَحَدِكُمْ مِنَ الْقِتَالِ»

«Fasting is a shield from the (Hell) Fire like the shield of one of you in battle.» (Ahmad and others)

**The Prophet's statement:**

«مَنْ صَامَ يَوْمًا فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ زُخْرَحَ اللَّهُ وَجْهَهُ عَنِ النَّارِ بِذَلِكَ الْيَوْمِ سَبْعِينَ خَرِيفًا»

«Whoever fasts a day in the way of Allāh the Mighty and Majestic, Allāh will keep his face away from the (Hell) Fire for (the distance of) seventy autumn seasons because of that day.» (Al-Bukhari and Muslim)

**The Prophet's statement:**

«إِنَّ لِلصَّائِمِ عِنْدَ فِطْرِهِ دَعْوَةً لَا تُرَدُّ»

«Verily the fasting person has a supplication that will not be rejected when he breaks his fast (i.e. at the end of the day).» (Ibn Majah and Al-Hakim, who said it is *Sahih*.)

**The Prophet's statement:**

«إِنَّ فِي الْجَنَّةِ بَابًا يُقَالُ لَهُ الرَّيَّانُ، يَدْخُلُ مِنْهُ الصَّائِمُونَ يَوْمَ الْقِيَامَةِ، لَا يَدْخُلُ مِنْهُ أَحَدٌ غَيْرُهُمْ، يُقَالُ: أَيْنَ الصَّائِمُونَ، فَيَقُومُونَ لَا يَدْخُلُ مِنْهُ أَحَدٌ غَيْرُهُمْ، فَإِذَا دَخَلُوا أُغْلِقَ، فَلَمْ يَدْخُلْ مِنْهُ أَحَدٌ»

«Verily there is a gate in Paradise called Ar-Rayyan that the people who observed fasting will enter through on the Day of Resurrection, and none will enter it other than them. It will be said, 'Where are the fasting people?' So they will stand (and enter it) and none will enter through it other than them. Then after they have entered, it will be closed and no one will enter it (after them).» (Al-Bukhari and Muslim)

### **Its Benefits**

Fasting provides benefits for the soul, the society and health, and they are as follows:

From the spiritual benefits of fasting is that it accustoms one to patience and strengthens one's patience. It teaches self-restraint and helps one to practice it. It places the gift of piety in the soul and cultivates it, and particularly the piety which is the outstanding reason for fasting that is mentioned in Allāh the Almighty's statement:

﴿كَيْبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُيِبَ عَلَى الَّذِينَ مِن قَبْلِكُمْ لَمَّا كُنتُمْ تَنفُرُونَ﴾

﴿Fasting has been made obligatory for you just as it was made obligatory for those who were before you so that you may have Taqwa.﴾ (2:183)

From the social benefits of fasting is that it accustoms the (Muslim) community to organization and unity, and love of justice and equality. It makes a feeling of mercy and good character in the believers. Likewise, it protects the society from evils and vices.

From the health benefits of fasting is that it cleanses the intestines and benefits the stomach. It also purifies the body from excesses and deposits, and it lessens the settling of fat and heaviness of the stomach with fat. It is narrated in a *Hadith* that he ﷺ said:

«صُومُوا تَصِحُّوا»

«Fast and be healthy.» (Ibn As-Sunni and Abu Nu'aym, and As-Suyuti graded it *Hasan*.)

## Recommended Fasts

Fasting is recommended on the following days:

1. The Day of 'Arafah for those who are not performing *Hajj*. This is the 9th of Dhul-Hijjah. This is due to the statement of the Prophet ﷺ:

«صَوْمُ يَوْمِ عَرَفَةَ يُكَفِّرُ ذُنُوبَ سَنَتَيْنِ مَاضِيَةٍ وَمُسْتَقْبَلَةٍ، وَصَوْمُ عَاشُورَاءَ يُكَفِّرُ سَنَةً مَاضِيَةً»

«Fasting the Day of 'Arafah' expiates the sins of two years, the previous year and the forthcoming year. And fasting the Day of 'Ashura' expiates the previous year (i.e. its sins).» (Muslim)

2. The Day of 'Ashura' and the Day of Tasu'a', and they are the 10th and 9th of the month of Al-Muharram. This is due to the Prophet's statement:

«... وَصُومُ يَوْمِ عَاشُورَاءَ يُكَفِّرُ سَنَةً مَاضِيَةً»

«And fasting the Day of 'Ashura' expiates the previous year (i.e. its sins).» (Muslim)

And just as he ﷺ fasted the Day of 'Ashura' and ordered (the people) to fast it, he said:

«فَإِذَا كَانَ الْعَامُ الْمُتَعَبِّلُ إِنْ شَاءَ اللَّهُ صُمْنَا الْيَوْمَ التَّاسِعَ»

«When the next year comes, if Allāh wills, we shall fast the ninth day (as well).» (Muslim and Abu Dawud)

3. Six days of the month of Shawwal. This is due to the Prophet's statement:

«مَنْ صَامَ رَمَضَانَ ثُمَّ أَتْبَعَهُ سِتًّا مِنْ شَوَّالٍ كَانَ كَصِيَامِ الدَّهْرِ»

«Whoever fasts Ramadhan and follows it up with (fasting) six days of Shawwal, it is like fasting the entire year.» (Muslim)

4. The first half of the month of Sha'ban. This is due to the statement of 'A'ishah, may Allāh be pleased with her:

«I never saw the Messenger ﷺ fast an entire month except for Ramadhan and I did not see him fasting more in any month than in the month of Sha'ban.» (Al-Bukhari and Muslim)

5. The first ten days of the month of Dhul-Hijjah. This is due to the Prophet's statement:

«مَا مِنْ أَيَّامٍ الْعَمَلُ الصَّالِحُ فِيهَا أَحَبُّ إِلَى اللَّهِ عَزَّ وَجَلَّ مِنْ هَذِهِ الْأَيَّامِ - يَعْنِي الْعَشَرَ الْأَوَّلَ مِنْ ذِي الْحِجَّةِ -»

*«There are no days in which a righteous deed is more beloved to Allāh the Mighty and Majestic than these days meaning the first ten days of Dhul-Hijjah.»*

They said, "O Messenger of Allāh! Not even *Jihad* in the way of Allāh?" He said:

«وَلَا الْجِهَادُ فِي سَبِيلِ اللَّهِ، إِلَّا رَجُلٌ خَرَجَ بِنَفْسِهِ وَمَالِهِ، ثُمَّ لَمْ يَرْجِعْ مِنْ ذَلِكَ بِشَيْءٍ»

*«Not even Jihad in the way of Allāh, except for a man who goes out (for Jihad) with his self and his wealth, then he does not return with any of that (i.e. he loses his life and wealth in Jihad).» (Al-Bukhari)*

6. The month of Al-Muharram. This is due to the Prophet's statement when he was asked, "Which is the best fast after Ramadhan?" He replied:

«شَهْرُ اللَّهِ الَّذِي تَدْعُونَهُ الْمُحَرَّمَ»

*«The month of Allāh, which you call Al-Muharram.» (Muslim)*

7. The white days (*Al-Ayyam-ul-Beedh*) of every month and they are the 13th, the 14th and the 15th (of the lunar calendar). This is due to the statement of Abu Dharr, may Allāh be pleased with him:

"The Messenger of Allāh ordered us to fast the three white days (*Ayyam-ul-Beedh*) of the month: the 13th, the 14th and the 15th. And he said, 'They are like fasting the entire year.'" (An-Nasa'i and graded authentic by Ibn Hibban)

8 & 9. Monday and Thursday. This is due to what has been reported that the Prophet ﷺ used to fast more on Mondays and Thursdays (than any other days). He was asked about that and he said:

«إِنَّ الْأَعْمَالَ تُغْرَضُ كُلُّ اثْنَيْنِ وَخَمِيسٍ فَيَغْفِرُ اللَّهُ لِكُلِّ مُسْلِمٍ، أَوْ لِكُلِّ مُؤْمِنٍ إِلَّا الْمُتَهَاَجِرِينَ، فَيَقُولُ: أَخْرَهُمَا»

*«Verily the deeds are presented (before Allāh) every Monday*

and Thursday, and Allāh forgives every Muslim or every believer, except for two who are shunning each other. Thus, He says, 'Delay them (i.e. their forgiveness)'.» (Ahmad and its chain of narration is authentic)

10. Fasting a day and not fasting a day. This is due to the Prophet's statement:

«أَحَبُّ الصِّيَامِ إِلَى اللَّهِ صِيَامُ دَاوُدَ، وَأَحَبُّ الصَّلَاةِ إِلَى اللَّهِ صَلَاةُ دَاوُدَ، كَانَ يَنَامُ نِصْفَهُ وَيَقُومُ ثُلُثَهُ وَيَنَامُ سُدُسَهُ، وَكَانَ يَصُومُ يَوْمًا وَيُفْطِرُ يَوْمًا»

«The most beloved fast to Allāh is the fast of Dawud and the most beloved prayer to Allāh is the prayer of Dawud. He used to sleep half of the night, stand (in prayer) a third of it and sleep a sixth of it. And he used to fast a day and not fast a day (i.e. fast every other day).» (Al-Bukhari and Muslim)

11. Fasting for the single person who is not able to get married. This is due to the Prophet's statement:

«مَنِ اسْتَطَاعَ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَخْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ رِجَاءٌ»

«Whoever is able to afford it should get married, for verily it helps to keep the gaze lowered and it is safer for the private parts (i.e. against illegal sexual intercourse). And whoever is not able (to marry) then he must fast, for verily it is a means of cutting off the sexual desires.» (Al-Bukhari)

## What is disliked of Fasting

1. Fasting the Day of 'Arafah for whoever is standing at the plane of 'Arafah (for Hajj). This is due to the Prophet's prohibition of fasting the Day of 'Arafah for those who are at 'Arafat. (Abu Dawud and graded it was Sahih by Al-Hakim)

2. Singling out the day of Al-Jumu'ah (Friday) for fasting. This is due to the Prophet's statement:

«إِنَّ يَوْمَ الْجُمُعَةِ عِيدُكُمْ فَلَا تَصُومُوهُ، إِلَّا أَنْ تَصُومُوا قَبْلَهُ أَوْ بَعْدَهُ»

«Verily the day of Al-Jumu'ah is your 'Eid, so do not fast it unless you fast (a day) before it or (a day) after it.» (Al-Bazzar and its chain of narration is good. It has a basis for it in Al-Bukhari and Muslim.)

3. Singling out the day of Saturday for fasting. This is due to the Prophet's statement:

«لَا تَصُومُوا يَوْمَ السَّبْتِ إِلَّا فِيَمَا اقْتَرَضَ عَلَيْكُمْ، وَإِنْ لَمْ يَجِدْ أَحَدُكُمْ إِلَّا لِحَاءَ عَنَبٍ أَوْ عُودَ شَجَرَةٍ فَلْيَنْضَغْهُ»

«Do not fast Saturday, except for that which has been made obligatory upon you. And if one of you cannot find anything but the skin of a grape or the stick of a tree, then he should chew it (on Saturday instead of fasting).» (Abu Dawud, At-Tirmithi, An-Nasa'i and Ibn Majah, and At-Tirmithi said it was Hasan.)

4. Fasting at the end of Sha'ban. This is due to the Prophet's statement:

«إِذَا انْتَصَفَ شَعْبَانٌ فَلَا تَصُومُوا»

«When the middle of Sha'ban comes do not fast.» (Abu Dawud, At-Tirmithi, An-Nasa'i and Ibn Majah, and Ibn Hibban graded it Sahih.)

#### **Note:**

The dislike of fasting these aforementioned days is for disdain. That which follows is disliked with the meaning of forbiddance. They are the following days:

1. *Al-Wisal*, which is to continue fasting for two days or more without breaking the fast. This is due to the Prophet's statement:

«لَا تُوَاصِلُوا»

«Do not practice Al-Wisal (continued fasting).» (Al-Bukhari)

And his statement:

«إِيَّاكُمْ وَالْوَصَالَ»

«Beware of practicing *Al-Wisal* (continued fasting).» (Al-Bukhari and Muslim)

2. Fasting the day of *Ash-Shakk* (doubt), which is the 30th day of *Sha'ban*. This is due to the Prophet's statement:

«مَنْ صَامَ يَوْمَ الشُّكِّ فَقَدْ عَصَى أَبَا الْقَاسِمِ»

«Whoever fasted the day of *Ash-Shakk* (doubt), then verily he has disobeyed *Abul-Qasim*.» (Al-Bukhari with an incomplete chain of narration.)

3. Fasting all the time, which means fasting the entire year without breaking the fast (i.e. everyday). This is due to the Prophet's statement:

«لَا صَامَ مَنْ صَامَ الْأَبَدَ»

«He has not fasted who always fasts.» (Muslim)

And his statement:

«مَنْ صَامَ الْأَبَدَ، فَلَا صَامَ وَلَا أَفْطَرَ»

«Whoever always fasts (i.e. everyday), then he has not fasted nor has he broken his fast.» (Ahmad and An-Nasa'i, who said it is *Sahih*.)

4. The fasting of a woman without the permission of her husband while he is present. This is due to the Prophet's statement:

«لَا تَصُومُ الْمَرْأَةُ يَوْمًا وَاحِدًا وَرَزُوجُهَا شَاهِدٌ إِلَّا بِإِذْنِهِ، إِلَّا رَمَضَانَ»

«The woman should not fast (even) one day while her husband is present, except with his permission, unless it is *Ramadhan*.» (Al-Bukhari and Muslim)



## Forbidden Fasting

It is forbidden to fast the following days:

1. Fasting on the day of the 'Eid, whether it is 'Eid-ul-Fitr or 'Eid-ul-Adhha. This is due to the statement of 'Umar, may Allāh be pleased with him:

"These are two days that the Messenger of Allāh ﷺ prohibited fasting on: The day of your breaking your fast ('Eid-ul-Fitr) and the day on which you eat from your sacrifice ('Eid-ul-Adhha)." (Muslim)

2. The three Days of At-Tashriq, as the Messenger of Allāh ﷺ sent a caller, who called out at Mina saying, "Do not fast these days. For verily they are days of eating, drinking and marital relations." (At-Tabarani and its basis is in Muslim.) In one wording it adds, "and the remembrance of Allāh."

3. The days of menstruation and postnatal bleeding, as there is a consensus that the fast of the menstruating woman and the woman in postnatal bleeding is not accepted. This is due to the Prophet's statement:

«أَلَيْسَتْ إِذَا حَاضَتْ لَمْ تُصَلِّ وَلَمْ تَصُمْ؟ فَذَلِكَ مِنْ نَقْصَانِ دِينِهَا»

*"Is it not that when she menstruates, she does not pray and she does not fast? So that is from the deficiency of her religious practice."* (Al-Bukhari)

4. The fasting of the sick person who fears that he could die (from his illness). This is due to the statement of Allāh the Most High:

﴿وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا﴾

*«And do not kill yourselves. Verily Allāh is Most Merciful to you.»* (4:29)

## The Obligation of Fasting Ramadhan

Fasting the month of Ramadhan is obligatory according to the Book (Al-Qur'an), the Sunnah and the *Ijma'* (consensus) of the *Ummah* (Muslim community). Verily Allāh the Almighty said:

﴿شَهْرُ رَمَضَانَ الَّذِي أُنْزِلَ فِيهِ الْقُرْآنُ هُدًى لِّلنَّاسِ وَبَيِّنَاتٍ مِّنَ الْهُدَىٰ  
وَالْفُرْقَانِ ۚ فَمَن شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ﴾

«The month of Ramadhan in which was revealed the Qur'an, a guidance for mankind and clear proofs for the guidance and the Criterion (between right and wrong). So whoever of you sights (the crescent on the first night of) the month (of Ramadhan), he must observe Saum (fasts) that (month).» (2:185)

And His Messenger ﷺ said:

«بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ: شَهَادَةُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ،  
وِاقَامُ الصَّلَاةِ، وَإِيتَاءُ الزَّكَاةِ، وَحَجُّ الْبَيْتِ وَصَوْمُ رَمَضَانَ»

«Islam was built upon five (pillars): The testimony that none has the right to be worshipped except Allāh and Muhammad is the Messenger of Allāh, the establishment of the prayer, paying Zakah, pilgrimage (Hajj) to the House (the Ka'bah) and fasting Ramadhan.» (Al-Bukhari and Muslim)

And his statement:

«عَرَى الْإِسْلَامَ وَقَوَاعِدُ الدِّينِ ثَلَاثَةٌ، عَلَيْهِنَّ أُسِّسَ الْإِسْلَامُ، مَنْ تَرَكَ وَاحِدَةً  
مِنْهُنَّ فَهُوَ بِهَا كَافِرٌ خَالِدٌ فِي الدِّمِّ: شَهَادَةُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَالصَّلَاةُ الْمَكْتُوبَةُ،  
وَصَوْمُ رَمَضَانَ»

«The handholds of Islam and the fundamentals of the religion are three. Islam was established upon them. Whoever abandons one of them, then he is a disbeliever (Kafir) because of it and his blood is lawful: The testimony that none has the right to be worshipped except Allāh, the obligatory prayer and fasting Ramadhan.» (Abu Ya'la in his Musnad, and its chain of narration is Hasan.)

## The Virtue of Ramadhan

Ramadhan has great virtues and numerous merits that none of the other months have. The following *Hadiths* verify and affirm this:

The Prophet's statement:

«الصَّلَاةُ الْخَمْسُ وَالْجُمُعَةُ إِلَى الْجُمُعَةِ، وَرَمَضَانُ إِلَى رَمَضَانَ مُكَفِّرَاتٌ لِمَا بَيْنَهُنَّ، إِذَا اجْتَنِبَ الْكَبَائِرُ»

*«The five prayers, and Friday prayer to Friday prayer, Ramadhan (fasting) to Ramadhan (fasting) are expiators for whatever was between them (of sins), as long as the major sins are avoided.»* (Muslim)

And his statement:

«مَنْ صَامَ رَمَضَانَ إِيمَانًا وَاحْتِسَابًا غُفِرَ لَهُ مَا تَقَدَّمَ مِنْ ذَنْبِهِ»

*«Whoever fasts Ramadhan with faith and seeking reward, he will be forgiven for his previous sins.»* (Al-Bukhari and Muslim)

And he ﷺ said:

«وَرَأَيْتُ رَجُلًا مِنْ أُمَّتِي يَلْهَثُ عَطْشًا، كُلَّمَا وَرَدَ حَوْضًا مَنَعَ مِنْهُ، فَجَاءَهُ صِيَامُ رَمَضَانَ فَشَقَّاهُ وَرَوَّاهُ»

*«And I saw a man from my Ummah (followers) panting with thirst. Every time he came to a pond (to drink) he was prevented from it. Then the fasting of Ramadhan came to him and gave him drink, and it quenched his thirst.»* (At-Tabarani in a *Hadith* about the Prophet's long dream during his sleep.)

And his statement:

«إِذَا كَانَ أَوَّلُ لَيْلَةٍ مِنْ رَمَضَانَ صُفِّدَتِ الشَّيَاطِينُ وَمَرَدَةُ الْجِنِّ، وَغُلِّقَتْ أَبْوَابُ النَّارِ فَلَمْ يُفْتَحْ مِنْهَا بَابٌ، وَفُتِّحَتْ أَبْوَابُ الْجَنَّةِ فَلَمْ يُغْلَقْ مِنْهَا بَابٌ؛ وَنَادَى مُنَادٌ: يَا بَاغِيَ الْخَيْرِ أَقْبِلْ، وَيَا بَاغِيَ الشَّرِّ أَقْصِرْ، وَلِلَّهِ عُتَقَاءُ مِنَ النَّارِ، وَذَلِكَ كُلُّ لَيْلَةٍ»

«When it is the first night of Ramadhan, the devils and the rebellious Jinns are chained up, the doors of the (Hell) Fire are closed and none of them is opened, and the doors of Paradise are opened and none of them is closed. A caller calls out, 'O seeker of good, advance (in your efforts), and O seeker of evil, restrain yourself' And Allāh will free people from the (Hell) Fire, and that is every night (of Ramadhan).»<sup>[1]</sup>

## The Virtue of Righteousness and Goodness During Ramadhan

Due to the virtue of Ramadhan, all good deeds, acts of righteousness and goodness that are practiced during it are also favored. From that:

**1. As-Sadaqah (charity):** As the Prophet ﷺ said:

«أَفْضَلُ الصَّدَقَةِ صَدَقَةٌ فِي رَمَضَانَ»

«The best charity is the charity (given) during Ramadhan.» (At-Tirmithi and it is weak)

And he ﷺ said:

«مَنْ فَطَرَ صَائِمًا فَلَهُ أَجْرُهُ مِنْ غَيْرِ أَنْ يُنْقَصَ مِنْ أَجْرِ الصَّائِمِ شَيْءٌ»

«Whoever feeds the person who is breaking his fast, he will have his reward (for his fasting) without decreasing anything from the reward of the fasting person.» (Ahmad and At-Tirmithi, and it is Sahih.)

And he ﷺ said:

«مَنْ فَطَرَ صَائِمًا عَلَى طَعَامٍ أَوْ شَرَابٍ مِنْ حَلَالٍ صَلَّتْ عَلَيْهِ الْمَلَائِكَةُ فِي سَاعَاتِ شَهْرِ رَمَضَانَ، وَصَلَّى عَلَيْهِ جِبْرِيلُ لَيْلَةَ الْقَدْرِ»

«Whoever feeds a person who is breaking his fast with food and

<sup>[1]</sup> At-Tirmithi, who said it is *Gharib*. Al-Hakim also recorded it and he graded it *Sahih* according to the conditions of the Two Shaykhs. (Al-Bukhari and Muslim)

*drink from that which is lawful, the angels pray for blessings upon him during the hours of the month of Ramadhan and Jibril prays for blessings upon him during the Night of Decree (Laylat-ul-Qadr).»* (At-Tabarani and Abu Ash-Shaykh)

The Prophet ﷺ was the most generous person in doing good, and he was more generous than ever during Ramadhan when he would meet with Jibril. (Al-Bukhari)

**2. Qiyam-ul-Layl (standing at night for prayer):** As the Prophet ﷺ said:

«مَنْ قَامَ رَمَضَانَ إِيمَانًا وَاحْتِسَابًا غُفِرَ لَهُ مَا تَقَدَّمَ مِنْ ذَنْبِهِ»

*«Whoever stands (for prayer at night) during Ramadhan, with faith and seeking reward, he will be forgiven for his previous sins.»* (Al-Bukhari and Muslim)

The Prophet ﷺ used to be more active (in prayer) during the nights of Ramadhan and during the last ten nights, he would wake everyone in his family, young and old, whoever was able to perform prayer. (Muslim)

**3. Recitation of the Noble Qur'an:** As the Prophet ﷺ used to recite the Noble Qur'an often during Ramadhan and Jibril, upon him be peace, used to review the Qur'an with him during Ramadhan. (Al-Bukhari)

The Prophet ﷺ used to prolong his recitation for Qiyam (standing in prayer at night) of Ramadhan more than he did at other times. Hudhayfah prayed with him one night and he recited *Surah Al-Baqarah*, then *Aal 'Imran* and then *An-Nisa'*. He did not pass a verse that caused fear except that he stopped at it and asked (supplicated to Allāh). He did not complete two *Rak'ahs* (units of prayer) until Bilal came and called him to the prayer (*Salat-ul-Fajr*). This narration has been related in the *Sahih* (of Al-Bukhari). The Prophet ﷺ said:

«الصَّيَامُ وَالْقِيَامُ يَشْفَعَانِ لِلْعَبْدِ يَوْمَ الْقِيَامَةِ، يَقُولُ الصَّوْمُ: رَبِّ مَنَعْتَهُ الطَّعَامَ وَالشَّرَابَ بِالنَّهَارِ، وَيَقُولُ الْقُرْآنُ: مَنَعْتَهُ النَّوْمَ بِاللَّيْلِ فَشَفَعْنَا فِيهِ»

«Fasting and standing in prayer (at night) will intercede for the servant (of Allāh) on the Day of Resurrection. Fasting will say, 'My Lord, I prevented him from food and drink during the day,' and the Qur'an will say, 'I prevented him from sleeping during the night, so allow us to intercede for him.'» (Ahmad and An-Nasa'i)

**4. Al-I'tikaf:** This means staying in the *Masjid* for worship, seeking to draw nearer to Allāh the Almighty. The Prophet ﷺ performed *Al-I'tikaf* and he always made *Al-I'tikaf* during the last ten nights of Ramadhan until Allāh the Almighty took him away. This has been related in the *Sahih* (of Al-Bukhari). He ﷺ said,

«الْمَسْجِدُ بَيْتُ كُلِّ نَفِيٍّ، وَتَكْفَلَ اللَّهُ لِمَنْ كَانَ الْمَسْجِدُ بَيْتَهُ بِالرَّوْحِ وَالرَّحْمَةِ  
وَالْجَوَازِ عَلَى الصَّرَاطِ إِلَى رِضْوَانِ اللَّهِ إِلَى الْجَنَّةِ»

«The *Masjid* is the house of every pious person and Allāh takes care of whoever has the *Masjid* as his home, with compassion, mercy and safe passage over the Bridge to the Pleasure of Allāh and Paradise.» (At-Tabarani and Al-Bazzar)

**5. 'Umrah:** This means visiting the Sacred House of Allāh (the Ka'bah) for the performance of *Tawaf* and *Sa'y* during Ramadhan, as the Prophet ﷺ said,

«عُمْرَةٌ فِي رَمَضَانَ تَعْدِلُ حَجَّةً مَعِيَ»

«An 'Umrah performed during Ramadhan is equivalent to a Hajj performed with me.» (Al-Bukhari and Muslim)

And he ﷺ said,

«الْعُمْرَةُ إِلَى الْعُمْرَةِ كَفَّارَةٌ لِمَا بَيْنَهُمَا»

«Al-'Umrah to Al-'Umrah is an expiation for whatever (sins) were committed between them.» (Al-Bukhari and Muslim)

## Confirming the Month of Ramadhan

The beginning of the month of Ramadhan is confirmed by

one of two matters: The first of them is the completion of the previous month, which is Sha'ban. Therefore, if Sha'ban completes thirty days, then the thirty-first day is the first day of Ramadhan, without a doubt. The second matter is sighting the crescent of the new moon for it (Ramadhan). So if the crescent moon of Ramadhan is seen on the thirtieth night of Sha'ban the month of Ramadhan has begun and it is obligatory to fast it. This is due to Allāh the Almighty's statement,

﴿فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ﴾

«So whoever witnesses the month then he must fast it.» (2:185)

And the Messenger's statement,

«إِذَا رَأَيْتُمُ الْهِلَالَ فَصُومُوا، وَإِذَا رَأَيْتُمُوهُ فَأَنْطَرُوا، فَإِنْ غُمَّ عَلَيْكُمْ فَأَكْمِلُوا  
الْعِدَّةَ ثَلَاثِينَ يَوْمًا»

«When you see the crescent moon (of Ramadhan), then fast, and when you see it (for Shawwal) then stop fasting. And if it is hidden from you by clouds, then complete the period as thirty days.» (Muslim)

The witness of one or two just people is sufficient in confirming its sighting, as the Messenger of Allāh ﷺ permitted the witness of one man in sighting the crescent moon of Ramadhan. (Abu Dawud and others, and it is *Sahih*). However, concerning the sighting of moon of Shawwal to stop fasting, it is not confirmed except by the witness of two just men, as the Messenger ﷺ did not allow the witness of one just man for ending the fast. (At-Tabarani and Ad-Daraqutni)

#### **Note:**

Whoever sees the crescent moon of Ramadhan, it is obligatory upon him to fast, even if his witness is not accepted (by others). And whoever sees the crescent moon for ending the fast and his witness is not accepted, then he does not break his feast. This is due to the Prophet's

statement:

«الصَّوْمُ يَوْمٌ تَصُومُونَ، وَالْفِطْرُ يَوْمٌ تُفْطِرُونَ، وَالْأَضْحَى يَوْمٌ تُضَحُّونَ»

«The fast is the day that all of you fast, the end of the fast is when all of you stop fasting, and the sacrifice is the day that all of you perform the sacrifice (of animals).» (At-Tirmithi, who said it is *Hasan*)<sup>[1]</sup>

## The Conditions that Require Fasting

The conditions for the fast being considered obligatory upon the Muslim is that the person is of sound mind (*'Aqil*) and they have reached the age of puberty (*Baligh*). This is due to the Prophet's statement:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الْمَجْنُونِ حَتَّى يُفِيْقَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ»

«The pen is lifted from three (persons): the insane person until he regains his intellect, the sleeping person until he awakens and the child until he reaches the age of puberty.» (Ahmad and Abu Dawud, and it is *Sahih*)

In the case of a woman, it is also a condition for her fast to be correct that she be pure from menstrual bleeding and postnatal bleeding. This is due to the Prophet's statement in explaining the deficiency of the woman's religious practice:

«أَلَيْسَتْ إِذَا حَاضَتْ لَمْ تَصَلِّ وَلَمْ تَصُمْ»

«Is it not that when she menstruates, she does not pray and

[1] Ibn Majah's version states:

«الْفِطْرُ يَوْمٌ تُفْطِرُونَ، وَالْأَضْحَى يَوْمٌ تُضَحُّونَ»

«The end of the fast is when all of you stop fasting and the sacrifice is the day that all of you perform the sacrifices (of animals).»



*she does not fast?»* (Al-Bukhari)

## The Traveler

If the Muslim travels a short distance, which is forty-eight miles, the *Shari'ah* has allowed him to break his fast, under the condition that he makes up the fast that he broke when he returns to his homeland. This is due to Allāh the Almighty's statement:

﴿فَمَنْ كَانَ مِنْكُمْ مَّرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ﴾

﴿So whoever was ill among you or on a journey, then (he must make up) the number (of days) from other days.﴾ (2:184)

If fasting during travel is not difficult for him, then he should fast and that would be better. If fasting (during travel) would be difficult for him, then he should break his fast and that would be better. This is due to Abu Sa'īd Al-Khudri's statement, may Allāh be pleased with him:

"We used to travel for war expeditions with the Messenger of Allāh ﷺ during Ramadhan. So some of us would fast and some of us would not fast, and the fasting person would not be angry<sup>[1]</sup> with the one who was not fasting, and the person who was not fasting would not be angry with the one who was fasting. Then they thought that the person who had the strength would fast and that was good. And they thought that the person who felt weak would not fast and that was good." (Muslim)

## The Person who is Ill

If the Muslim becomes ill during Ramadhan, he considers if he is able to fast without any extreme difficulty. If so, then he fasts. If he is not able (to fast without difficulty), he

[1] In some of the wordings it states, "would not blame." The meaning of the word *Yajid* here means to become angry, as *Al-Wajid* means *Al-Ghadhab* (anger).

breaks his fast. Then, if he expects to recuperate from his illness, he waits until he recuperates and then he makes up for whatever days he did not fast. However, if he is not expected to recover, he breaks his fast and gives charity for each day that he does not fast by giving a *Mudd* of foodstuff, meaning a handful of wheat. This is due to Allāh the Almighty's statement:

﴿وَعَلَى الَّذِينَ يُطِيقُونَ فِدْيَةَ طَعَامٍ مِّنْكَائِ﴾

﴿And as for those who can fast with difficulty, they have to feed a poor person as compensation.﴾ (2:184)

### The Elderly Person

If the Muslim man or woman reaches the extreme old age, at which they do not have the strength to fast, they may break the fast and give charity for every day that they did not fast, by giving a *Mudd* of foodstuff. This is due to the statement of Ibn 'Abbas, may Allāh be pleased with him:

"It was permitted for the very elderly man (or woman) to feed a poor person for every day (that he did not fast), and he did not have to make up for the days." (Ad-Daraqutni and Al-Hakim, who graded it *Sahih*.)

### The Pregnant and Breast-feeding Woman

If the Muslim woman is pregnant and she fears for herself or the child she is carrying, she may break her fast. Then, when her excuse has gone, she makes up for her missed days of fasting. If she is wealthy, she should give charity with a *Mudd* of wheat along with each day that she fasts. This will be more complete for her and greater in reward.

Likewise is the ruling in reference to the breast-feeding woman if she fears for herself or for her child and she cannot find anyone to breast-feed the child (for her), or if the child will not breast-feed from anyone other than her. This ruling is derived from the statement of Allāh the Most High:

﴿وَعَلَى الَّذِينَ يُطِيقُونَ إِذْيَةً طَعَامٌ مِثْلِهِ﴾

«And as for those who can fast with difficulty, they have to feed a poor person as compensation.» (2:184)

For the meaning of “who can fast” is that they are able to do so, however with extreme difficulty. So they break their fast and make up for the days or feed a poor person (for each day).

### Important Notes:

1. Whoever delays in making up for the missed fasting of Ramadhan without an excuse until the next Ramadhan comes upon him, then he must also feed a poor person for each day that he must make up of fasting.

2. Whoever dies having fasts to make up, his responsible heir makes up for the owed fasting on his behalf. This is due to the Prophet’s statement:

«مَنْ مَاتَ وَعَلَيْهِ صِيَامٌ صَامَ عَنْهُ وَلِيُّهُ»

«Whoever died while having fasting due upon him, his responsible heir fasts on his behalf.» (Al-Bukhari and Muslim)

There is also the Prophet’s statement to the person who asked him:

“Verily my mother died and she owed a month’s fasting that she did not make. Should I make up for the fasting on her behalf?” He replied:

«نَعَمْ، فَذَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى»

«Yes, the debt owed to Allāh has more right to be made up.»

(Al-Bukhari and Muslim)

## The Pillars of Fasting

**1. An-Niyyah (Intention):** It is the resolve of the heart to fast in carrying out the command of Allāh the Mighty and Majestic, or to draw near to Him. This is due to the

statement of the Prophet ﷺ:

«إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ»

«Deeds are judged by their intentions.» (Al-Bukhari)

If the fast is an obligatory fast, then the intention must be made during the (previous) night, before *Fajr* time (the first crack of dawn). This is due to the Prophet's statement:

«مَنْ لَمْ يُيَبِّتِ الصِّيَامَ مِنَ اللَّيْلِ فَلَا صِيَامَ لَهُ»

«One who does not plan (intend) to fast during the night, there is no fast for him.» (At-Tirmithi)

If it is a non-obligatory fast, it is correct (acceptable) even if the intention is made after the entry of *Al-Fajr* (the first crack of dawn) and the progression of daytime, as long as he has not eaten anything. This is due to the statement of 'A'ishah, may Allāh be pleased with her:

“The Messenger of Allāh ﷺ entered upon me one day and said:

«هَلْ عِنْدَكُمْ شَيْءٌ؟»

«Do you have anything (to eat)?»

We said, 'No.' He said:

«فَإِنِّي صَائِمٌ»

«Then verily I am fasting.» (Muslim)

**2. Al-Imsak (Refraining):** This is to refrain from those things that break the fast, such as eating, drinking and sexual intercourse.

**3. Az-Zaman (The Time):** This means the daytime, which is from the entry of *Fajr* (the first crack of dawn on the horizon) until the setting of the sun. So if a man fasted during the night and did not fast during the day, his fast will never be correct (i.e. acceptable). This is due to the statement of Allāh the Almighty:

﴿أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ﴾

﴿And complete the fast until the night.﴾ (2:187)

## The Sunan (Recommended Acts) of Fasting

They are as follows:

**1. Hastening the breaking of the fast:** This is breaking the fast (*Al-Iftar*) immediately after it is confirmed that the sun has set. This is due to the Prophet's statement:

«لَا يَزَالُ النَّاسُ بِخَيْرٍ مَا عَجَّلُوا الْفِطْرَ»

«The people will remain upon goodness as long as they hasten in breaking the fast.» (Al-Bukhari and Muslim)

And the statement of Anas, may Allāh be pleased with him:

“Verily the Prophet ﷺ did not used to pray *Al-Maghrib* (the prayer after sunset) until he broke his fast (first), even if it was with a drink of water.” (At-Tirmithi, and he said it is *Hasan*)

**2. Breaking the fast with fresh dates, dried dates or water:** The best of these three things is the first of them (fresh dates), and the last of them (water) is the least preferred of them. It is also recommended to break the fast with an odd number - three, five or seven (of whatever is being eaten). This is due to the statement of Anas bin Malik:

“The Messenger of Allāh ﷺ used to break his fast with fresh dates before praying (i.e. the *Maghrib* prayer). If there were no fresh dates, he would break his fast with dry dates. If there were no dry dates he would take some sips of water.” (At-Tabarani)

**3. Supplicating when breaking the fast:** As the Prophet ﷺ used to say when breaking his fast:

«اللَّهُمَّ لَكَ صُومُنَا وَعَلَى رِزْقِكَ أَفْطَرْنَا، فَتَقَبَّلْ مِنَّا إِنَّكَ أَنْتَ السَّمِيعُ الْعَلِيمُ»

*Allaahumma laka sumnaa wa 'alaa rizqika aftarnaa, fataqabbal minnaa innaka Antas-Samee'ul-'Aleem.*

«O Allāh! We have fasted for You, and upon Your provisions we have broken our fast. So accept it from us. Verily, You are the All-Hearing, the All-Knowing.» (Abu Dawud)

Ibn 'Umar, may Allāh be pleased with him, used to say:

«اللَّهُمَّ إِنِّي أَسْأَلُكَ بِرَحْمَتِكَ الَّتِي وَسِعَتْ كُلَّ شَيْءٍ أَنْ تَغْفِرَ لِي ذُنُوبِي»

*Allaahumma innee asa'luka birahmatik, allatee wasi'at kulla shay'in, an taghfirlee thunoobi.*

«O Allāh! Verily, I ask You by Your Mercy, which encompasses everything, that You forgive my sins for me.» (Ibn Majah and it is *Sahih*)

**4. As-Sahur (Pre-Dawn Breakfast):** This is eating and drinking during the last part of the night before dawn with the intention of fasting. This is due to the Prophet's statement:

«إِنَّ فَضْلَ مَا بَيْنَ صِيَامِنَا وَصِيَامِ أَهْلِ الْكِتَابِ أَكْلَةُ السَّحْرِ»

«Verily that which separates (i.e. distinguishes) between our fast and the fasting of the People of the Book (i.e. Jews and Christians) is the eating before dawn (Sahur).» (Muslim)

«تَسَحَّرُوا فَإِنَّ فِي السَّحُورِ بَرَكَاتًا»

«Eat the meal of Sahur for verily in the Sahur there are blessings.» (Al-Bukhari and Muslim)

**5. Delaying Sahur until the very last part of the night:** This is due to the Prophet's statement:

«لَا تَزَالُ أُمَّتِي يَخْتَرُ مَا عَجَلُوا الْفِطْرَ وَأَخَّرُوا السَّحُورَ»

«My Ummah (nation of followers) will not cease being upon goodness as long as they hasten in breaking the fast and delay the Sahur (pre-dawn meal).» (Ahmad and it is authentic)

The time of Sahur begins from the last half of the night and

it ends (a few) minutes before *Fajr* (the first crack of dawn) comes in. This is due to the statement of Zayd bin Thabit, may Allāh be pleased with him:

"We used to take the *Sahur* meal with the Messenger of Allāh ﷺ. Then he would stand and offer the prayer (*Salat-ul-Fajr*)." I (the subnarrator) said, "How much time was between the *Adhan* (for *Salat-ul-Fajr*) and the *Sahur*?" He (Zayd) said, "The amount (of time) for fifty verses (of Qur'an to be recited)." (Al-Bukhari and Muslim)

#### **Note:**

Whoever has doubt about the entry of *Fajr* (the crack of dawn), he may eat or drink until he is certain that the time of *Fajr* has entered. Then he must abstain (from eating and drinking). This is due to Allāh the Almighty's statement:

﴿وَكُلُوا وَاشْرَبُوا حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الْأَبْيَضُ مِنَ الْخَيْطِ الْأَسْوَدِ مِنَ الْفَجْرِ﴾

﴿And eat and drink until the white thread (of dawn) becomes apparent (clear) to you from the black thread of Al-Fajr.﴾  
(2:187)

It was said to Ibn 'Abbas, may Allāh be pleased with him, "Verily, I eat the *Sahur* meal and then if I have doubt (about whether *Fajr* has entered or not), I abstain (from eating)." So he (Ibn 'Abbas) said to the person, "Eat as long as you have doubt, until you do not have doubt."<sup>11</sup>

### **Those Things that are Disliked while Fasting**

There are matters that are disliked for the fasting because they lead to the destruction (breaking) of the fast, even though these things themselves do not actually break the

<sup>[1]</sup> This was recorded by Ibn Abi Shaybah and Al-Hafidh related it in *Al-Fath*. Eating and drinking until the entry of *Fajr* becomes clear is the *Madh-hab* (view) of the majority. Malik held the view that whoever ate while having doubt about whether *Fajr* was in, then he must make up for that (day of fasting). However, this is only based upon trying to "play it safe".

fast. They are as follows:

1. Exaggerating in gargling and inhaling water into the nostrils during ablution (*Wudhu'*). This is due to the Prophet's statement:

«وَبَالَغْ فِي الْاسْتِنْشَاقِ إِلَّا أَنْ تَكُونَ صَائِمًا»

«And exaggerate when inhaling and exhaling water from the nostrils, unless you are fasting.» (Abu Dawud, At-Tirmithi, An-Nasa'i, Ibn Majah and Ibn Khuzaymah who graded it *Sahih*.)

So the Prophet ﷺ disliked that one would exaggerate while inhaling water into the nostrils out of fear that some of the water may reach the inside of the body and break his fast.

2. Kissing, as it stirs the sexual desires, leading to the breaking of the fast (if it is accompanied) by the excretion of *Al-Madhi* (seminal fluid) or sexual intercourse, which necessitates an expiation (i.e. freeing a slave, fasting sixty days consecutively or feeding sixty poor people).

3. Lustfully staring at the spouse.

4. Thinking about having sex (i.e. imagining it).

5. Touching the woman with the hand (with sexual desire) or rubbing against her with the body.

6. Chewing gum out of fear that some parts of it may escape to the throat.

7. Tasting from the pot or tasting some food.

8. Rinsing the mouth in other than *Wudhu'* or without a need to do so.

9. Applying kohl (to the eyes) at the beginning of the day, but there is no problem with doing so at the end of the day.

10. *Al-Hijamah* (cupping) or blood letting (by opening a vein) out of fear of weakness that may lead to breaking the fast, since it endangers the fast.



### Matters that Nullify the Fast

1. A fluid substance reaching the inside of the body by means of the nose, like snuff, or by way of the eye or ear, like drops, or by way of the rectum or the vagina of the woman, like an injection with a syringe.
2. Whatever reaches the inside of the body due to exaggerating in rinsing the mouth and inhaling and exhaling water from the nose during *Wudhu'* and other than it.
3. The excretion of *Al-Mani* (semen) due to staring (at something or someone that incites the lusts) or prolonged thinking (about sexual desires) or kissing or touching.
4. Intentional vomiting. This is due to the Prophet's statement:

«مَنْ اسْتَفَاءَ عَمْدًا فَلْيَقْضِ»

*«Whoever makes himself vomit intentionally, must make up for the fast.»* (Abu Dawud and At-Tirmithi)

However, whoever is overcome by vomiting and he vomits without him choosing to do so, this does not harm his fast.

5. Eating, drinking or having sexual intercourse if one is forced to do so.
6. Whoever eats or drinks while thinking that it is still nighttime, then it becomes evident to him that *Fajr* is in.
7. Whoever eats or drinks while thinking that nighttime (i.e. sunset) has come, then it becomes evident to him that it is still daytime.
8. Whoever eats or drinks out of forgetfulness and then he does not abstain (from eating and drinking thereafter), thinking that abstaining is not obligatory upon him as long as he ate and drank, and thus he continues eating and drinking (i.e. not fasting) until night comes.
9. That which is not food or drink reaching the inside of

the body by way of the mouth, like swallowing a gem or a string. This is due to what was narrated from Ibn 'Abbas, may Allāh be pleased with him, that he said:

"Fasting is for what enters (the body) and not for what comes out." (Ibn Abi Shaibah)

He (Ibn 'Abbas, may Allāh be pleased with him) meant by this that the fast is harmed by what enters the body and not by what comes out of it, such as blood and vomit.

10. Rejecting (breaking) the intentions to fast, even if the person does not eat or drink, as long as he is not thinking that it is the time for breaking the fast, otherwise his fast is nullified.

11. Apostasy from Islam, if he (the apostate) returns to Islam. This is due to Allāh the Almighty's statement:

﴿لَنْ أَشْرَكَ بِحَبْلٍ عَلَيْكَ وَتَكُونُ مِنَ الْخَاسِرِينَ﴾

«If you associate partners with Allāh, verily your deeds will be lost and you will certainly be of the losers.» (39:65)

All of these things break the fast and necessitate making up for the day that was nullified by them. However, there is no expiation that is required for these days, as expiation is only required for two (specific) things that nullify the fast, and they are as follows:

1. Intentionally having sexual intercourse under no compulsion: This is due to the statement of Abu Hurayrah, may Allāh be pleased with him:

"A man came to the Prophet ﷺ and said, 'I am destroyed, O Messenger of Allāh ﷺ.' He said:

«مَا أَهْلَكَ؟»

«What has destroyed you? »

The man said, 'I had sex with my wife during Ramadhan.' He said:

«هَلْ تَجِدُ مَا تُعْتِقُ رَقَبَةً»

«Do you have a slave that you can free?»

The man said, 'No.' He said:

«هَلْ تَسْتَطِيعُ أَنْ تَصُومَ شَهْرَيْنِ مُتَابَعَيْنِ؟»

«Are you able to fast two consecutive months?»

The man said, 'No.' He said:

«فَهَلْ تَجِدُ مَا تُطْعِمُ سِتِينَ مِسْكِينًا؟»

«Do you have enough to feed sixty poor people?»

The man said, 'No.' Then the man sat down. Then a basket containing dates was brought to the Prophet ﷺ and he said:

«خُذْ تَصَدَّقْ بِهَذَا»

«Take this and give it away as charity.»

The man said, 'Shall I give it to someone poorer than us, for I swear by Allāh, there is not a family between its (Al-Madinah's) two mountains more in need of it than us?' So the Prophet ﷺ laughed until his molar teeth became visible and he said:

«اذْهَبْ فَأُطْعِمْهُ أَهْلَكَ»

«Go and feed your family with it.» (Al-Bukhari and Muslim)

2. Eating or drinking without a valid excuse: This is the view of Abu Hanifah and Malik, may Allāh have mercy upon them. Their proof is that a man broke his fast during Ramadhan, so the Prophet ﷺ ordered him to make an expiation (for his sin). (Malik) In a *Hadith* of Abu Hurayrah, may Allāh be pleased with him, he said, "A man came to the Prophet ﷺ and said, 'I intentionally broke my fast one day during Ramadhan.' The Prophet ﷺ said:

«أَغْتِقْ رَقَبَةً، أَوْ صُمْ شَهْرَيْنِ مُتَابَعَيْنِ، أَوْ أَطْعِمْ سِتِينَ مِسْكِينًا»

«Free a slave or fast two consecutive months or feed sixty poor people.» (Al-Bukhari and Muslim)

### **What is Permissible for the Fasting Person to do**

Certain matters are permissible for the fasting person. They are as follows:

1. Cleaning the teeth with the tooth stick during the entire day, except in the case of what is reported from Imam Ahmad, for he did not like for the fasting person to clean his teeth with the tooth stick after midday.
2. Cooling oneself with water from the severity of the heat. It makes no difference whether he pours it over his body or immerses himself in it.
3. Eating, drinking and having sexual intercourse during the night, until it is verified that *Fajr* has come in.
4. Traveling for a permissible need, even if he knows that his journey will compel him to break his fast.
5. Treating illness with any lawful medicine that does not reach the inside of the body (i.e. the stomach). This includes the use of the needle (i.e. for a shot) if it is not for nourishment.
6. Chewing food for a small infant when there is no one else who can chew his and it must be chewed. This is with the condition that none of the food reaches the interior (i.e. stomach) of the person who chews it.
7. Using perfume and incense. This is because there is nothing reporting the prohibition of any of this from the *Shari'ah*

### **What is Excusable**

Certain matters are excused concerning the fasting person. They are as follows:

1. Swallowing saliva, even if it is a lot. What is meant here

is the person's own saliva and not the saliva of someone else.

2. Unintentional vomiting and that which comes up with belching if nothing of it returns to the person's stomach after it reached the edge of his tongue.

3. Swallowing a fly unintentionally and not by choice.

4. Swallowing dust from the road and factories, smoke from firewood and other types of smoke which are not possible to avoid.

5. Waking up in the morning sexually defiled, even if the entire day passes on the person and he is sexually defiled (i.e. from the previous night).

6. Wet dreams. There is no sin upon the person who has a wet dream while he is fasting. This is based on the *Hadith*:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: الْمَجْنُونِ حَتَّى يُفِيقَ، وَالتَّائِمِ حَتَّى يَسْتَقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ»

*«The pen is lifted from three (people): the insane person until he regains his intellect, the sleeping person until he awakens and the child until he reaches the age of puberty.»* (See earlier)

7. Eating or drinking accidentally or forgetfully, except that Malik held the view that the person must make up for the day if it was an obligatory fast. This was out of precaution on his behalf. However, concerning the nonobligatory fast, one is definitely not obligated to make it up. This is due to the Prophet's statement:

«مَنْ نَسِيَ وَهُوَ صَائِمٌ فَأَكَلَ أَوْ شَرِبَ فَلْيَتِمَّ صَوْمَهُ، فَإِنَّمَا أَطْعَمَهُ اللَّهُ وَسَقَاهُ»

*«Whoever forgets while he is fasting and he eats or drinks, then let him complete his fast. For it was only Allāh who fed him and gave him drink.»* (Al-Bukhari and Muslim)

And his statement:

«مَنْ أَفْطَرَ فِي رَمَضَانَ نَاسِيًا فَلَا قَضَاءَ عَلَيْهِ وَلَا كَفَّارَةَ»

*«Whoever breaks his fast during Ramadhan due to forgetfulness, then he does not have to make up for that day, nor make an expiation.» (Ad-Daraqutni and it is Sahih)*

## Expiation

Expiation refers to that which atones for a sin resulting from opposing Islamic Law. Thus, whoever opposes the Islamic Law and has sexual intercourse during the daytime in Ramadhan, or he eats or drinks intentionally, it is obligatory upon him to make an expiation for this opposition (i.e. disobedience of the Law), by doing one of three things. He may free a believing slave, fast two consecutive months or feed sixty poor people, giving each poor person one *Mudd* of wheat, barley or dried dates according to whatever he can give. This is based upon what has passed in the *Hadith* of the man who had sex with his wife and then asked the Messenger of Allāh ﷺ for a verdict concerning it. The number of times the expiation is performed is based upon the number of times the person opposed the Law. So whoever had sex during a day (in Ramadhan) and he (also) ate or drank on another day (during Ramadhan), then he must make expiation twice.

## The Wisdom behind the Expiation

The wisdom behind the expiation is to protect the Islamic Law from being played with and its sacredness from being violated. Likewise, it cleanses the soul of the Muslim from the effects of the sin he committed without an excuse. From this it is necessary that the expiation be carried out in the manner in which it was legislated, both in its amount and its method. This is so that it will be successful in fulfilling its goal by removing the sin and wiping away its effects upon the soul. The basis of the expiation is the statement of Allāh the Almighty:

﴿إِنَّ الْحَسَنَاتِ يُذْهِبْنَ الْفَسَاةَ﴾

«Verily the good deeds remove the bad deeds.» (11:114)

And the statement of the Messenger ﷺ:

«اتَّقِ اللَّهَ حَيْثُمَا كُنْتَ، وَأَتَّبِعِ السَّيِّئَةَ الْحَسَنَةَ تَمْحُهَا، وَخَالَقِ النَّاسَ بِخُلُقِي  
حَسَنٍ»

«Fear Allāh wherever you are and follow up the evil deed with a good deed and it will erase it. And deal with the people with good character.» (At-Tirmithi and he graded it *Hasan*)

## **Hajj and 'Umrah**

### **The Ruling of Hajj and 'Umrah**

*Hajj* is an obligation of Allāh upon every male and female Muslim who is able to find a way there. This is due to Allāh's statement:

﴿وَلِلّٰهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ اِلَيْهِ سَبِيْلًا﴾

﴿And Hajj (pilgrimage to Makkah) to the House (Ka'bah) is a duty that mankind owes to Allāh, those who can find a way there.﴾ (3:97)

And the statement of the Messenger ﷺ:

«بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ: شَهَادَةِ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَإِقَامِ الصَّلَاةِ، وَإِيتَاءِ الزَّكَاةِ، وَحَجِّ الْبَيْتِ، وَصَوْمِ رَمَضَانَ»

«Islam was built upon five (pillars): the testimony that none has the right to be worshipped except Allāh and Muhammad is the Messenger of Allāh, the establishment of the prayer, paying Zakah, Hajj to the House (Ka'bah) and fasting Ramadluan.» (Al-Bukhari and Muslim)

It (*Hajj*) is obligatory once in a person's life. This is due to the Prophet's statement:

«الْحَجُّ مَرَّةً، فَمَنْ زَادَ فَهُوَ نَطَوُّعٌ»

«The Hajj is once, so whoever does it more, then it is supererogatory.» (Abu Dawud, Ahmad, and Al-Hakim who graded it *Sahih*)

It is recommended to repeat it every five years due to the Prophet's statement that he related from His Lord, the Mighty and Sublime (i.e. a *Hadith Quds*):



«إِنَّ عَبْدًا صَحَّحْتُ لَهُ جِسْمَهُ، وَوَسَّعْتُ عَلَيْهِ فِي الْمَعِيشَةِ يَمْضِي عَلَيْهِ خَمْسَةُ أَغْوَامٍ لَا يَقْدُ إِلَيَّ لِمَخْرُومٍ»

«Verily a servant, whom I gave a healthy body, and I expanded for him his livelihood, and five years pass upon him that he does not come to Me (for Hajj at Makkah), then he is deprived.» (Ibn Hibban in his *Sahih* and Al-Bayhaqi, who spoke about its chain of narration.)

Concerning 'Umrah, it is an obligatory Sunnah. This is due to Allāh the Almighty's statement:

﴿وَأَتِمُّوا الْحَجَّ وَالْمَرَّةَ لِلَّهِ﴾

«And complete Al-Hajj and Al-'Umrah for Allāh.» (2:196)

And the statement of the Messenger of Allāh ﷺ:

«حُجَّ عَنْ أَبِيكَ وَاعْتَمِرْ»

«Perform Hajj and 'Umrah on behalf of your father.» (Abu Dawud, At-Tirmithi, An-Nasa'i, Ibn Majah and At-Tirmithi said it is *Sahih*.)

He ﷺ said this to someone who said to him, "Verily my father is a very old man who is not able to perform Hajj, nor 'Umrah, nor undertake a journey."

### **The Wisdom behind Hajj and 'Umrah**

From the wisdom behind Al-Hajj and Al-'Umrah is the purification of the soul from the effects of sins so that it becomes deserving of Allāh's respect in the abode of the Hereafter. This is due to the Prophet's statement:

«مَنْ حَجَّ هَذَا الْبَيْتَ فَلَمْ يَرْفُثْ وَلَمْ يَنْسُقْ، خَرَجَ مِنْ ذُنُوبِهِ كَيَوْمٍ وَلَدَتْهُ أُمُّهُ»

«Whoever makes pilgrimage (Hajj) to this House (the Ka'bah) and he does not have sexual intercourse (with his wife), nor does he commit any transgressions, he will come out of his sins just like the day that his mother gave birth to him.» (Al-Bukhari and Muslim)

## The Conditions of their Obligation

The following conditions are stipulated for *Hajj* and '*Umrah* to be considered obligatory upon the Muslim:

1. Islam: The non-Muslim is not requested to perform *Hajj*, nor '*Umrah*, nor any other type of worship. This is because faith is a condition for the correctness and acceptance of deeds.
2. Intellect: This is because there is no responsibility placed upon those who are insane.
3. Puberty: This is because there is no responsibility placed upon the child until he reaches the age of puberty. This is due to the Prophet's statement:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: الْمَجْنُونِ حَتَّى يُفِيْقَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ»

*«The pen is lifted from three (people): the insane person until he regains his intellect, the sleeping person until he awakens and the child until he reaches the age of puberty.»* (See earlier)

4. Ability: This means having the provisions and the means of transportation. This is due to Allāh the Almighty's statement:

﴿مَنْ اسْتَطَاعَ إِلَيْهِ سَبِيلًا﴾

«Whoever is able to find a way there.» (3:97)

Thus, the poor person who has no wealth with him that he can spend on himself during his *Hajj* and upon his dependents, if he has dependents, when he leaves them behind, then it is not obligatory upon him to perform *Hajj* or '*Umrah*. Likewise, whoever has enough wealth for his expenses and the expenses of his dependents, but he cannot find any transportation (to get there) and he is not strong enough to walk (the distance), or he finds transportation, but the route there is not safe - for example he fears for himself or his wealth - then it is not obligatory

upon him to perform *Hajj* or '*Umrah*. This is because he lacks the ability (to perform it).

### **Encouragement to perform *Hajj* and '*Umrah* and Warning against not Performing them**

The *Shari'ah* encourages these two great acts of worship, and incites (the Muslims) to their performance. It has called to this through various methods and expressed this in different ways. From these is the Prophet's statement:

«أَفْضَلُ الْأَعْمَالِ: إِيْمَانٌ بِاللّٰهِ وَرَسُولِهِ، ثُمَّ جِهَادٌ فِي سَبِيلِهِ، ثُمَّ حَجٌّ مَبْرُورٌ»

*«The best of deeds is belief in Allāh and His Messenger, then Jihad in His way, then a blessed and accepted Hajj.»* (Al-Bukhari and Muslim)

And his statement:

«مَنْ حَجَّ هَذَا الْبَيْتَ فَلَمْ يَرْفُثْ وَلَمْ يَفْسُقْ، خَرَجَ مِنْ ذُنُوبِهِ كَيَوْمِ وَلَدَتْهُ أُمُّهُ»

*«Whoever performs Hajj to this House (the Ka'bah), and he does not have sexual intercourse (with his wife), nor does he commit any transgressions, he will come out of his sins just like the day that his mother gave birth to him.»* (Al-Bukhari and Muslim)

And his statement:

«الْحَجُّ الْمَبْرُورُ لَيْسَ لَهُ جَزَاءٌ إِلَّا الْجَنَّةُ»

*«There is no reward for Al-Hajj-ul-Mabrur (the blessed and accepted Hajj) other than Paradise.»* (Al-Bukhari and Muslim)

And his statement:

«جِهَادُ الْكَبِيرِ وَالضَّعِيفِ وَالْمَرْأَةِ الْحَجُّ الْمَبْرُورُ»

*«The Jihad of the elderly, the weak and the woman is Al-Hajj-ul-Mabrur (the blessed and accepted Hajj).»* (An-Nasa'i and it is authentic.)

And his statement:

«الْعُمْرَةُ إِلَى الْعُمْرَةِ كَفَّارَةٌ لِمَا بَيْنَهُمَا، وَالْحَجُّ الْمَبْرُورُ لَيْسَ لَهُ جَزَاءٌ إِلَّا الْجَنَّةُ»

«Al-'Umrah to Al-'Umrah is an expiation for whatever was between them (of sins), and there is no reward for Al-Hajj-ul-Mabrur other than Paradise.» (Al-Bukhari)

Likewise, the Islamic Law warns against abandoning them (Al-Hajj and Al-'Umrah) and it issues many warnings against delaying their performance. The Prophet ﷺ said:

«مَنْ لَمْ تَخِشْهُ حَاجَةً ظَاهِرَةً أَوْ مَرَضًا حَاسِبًا أَوْ مَنَعَ مِنْ سُلْطَانٍ جَانِبٍ وَلَمْ يَحُجَّ فَلَيْتُمْ إِنْ شَاءَ يَهُودِيًّا أَوْ نَصْرَانِيًّا»

«Whoever is not detained by an apparent need or a confining illness or the prevention of an oppressive ruler, and he does not perform Hajj, then if he wills let him die as a Jew or a Christian.» (Ahmad, Abu Ya'la and Al-Bayhaqi. Even though it is weak it has supporting narrations that make it *Hasan*, as Ash-Shawkani said.)

And 'Ali, may Allāh be pleased with him, said:

«Whoever possesses the provisions (i.e. wealth) and transportation that will enable him to reach the Sacred House of Allāh (the Ka'bah) and he does not perform Hajj, then it does not matter that he dies a Jew or a Christian.» [At-Tirmithi who said it is *Gharib*. He recorded it as a statement of the Prophet ﷺ (*Marfu'*), but it is more correct (or authentic) as only a statement of a Companion (*Mawquf*).]

This is due to Allāh the Almighty's statement:

﴿وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا وَمَنْ كَفَرَ فَإِنَّ اللَّهَ عَزِيزٌ عَلِيمٌ﴾

«And Hajj (pilgrimage to Makkah) to the House (Ka'bah) is a duty that mankind owes to Allāh, those who can find a way there. And whoever disbelieves (i.e. denies Hajj, then he is a disbeliever in Allāh), then Allāh stands not in need of any of

the 'Alamin (mankind and Jinns). ﴿ (3:97)

'Umar, may Allāh be pleased with him, said:

"Verily, I considered sending some men to these cities so that they can look for everyone who has wealth but does not perform *Hajj*, and then make them pay the *Jizyah* (tax paid by non-Muslims who live under the protection of the Muslim State). They (those who do not make *Hajj* while having the money to do so) are not Muslims, they are not Muslims." (Al-Bayhaqi and Sa'īd bin Mansur in his *Sunan*)

### **The Pillars of *Al-Hajj* and *Al-'Umrah***

*Hajj* has four pillars, they are; *Al-Ihram*, *At-Tawaf*, *As-Sa'y* and *Al-Wuquf* at 'Arafat. If one of these pillars is left off, the *Hajj* is nullified.

'*Umrah* has three pillars and they are *Al-Ihram*, *At-Tawaf* and *As-Sa'y*. '*Umrah* is not complete without these things. The explanation of these pillars is as follows:

#### **The First Pillar: *Al-Ihram***

The first of the pillars of *Al-Hajj* and *Al-'Umrah* is *Al-Ihram*, that is the intention to enter into one of the two sacred rituals, *Al-Hajj* and *Al-'Umrah*, accompanied by the removal of the (normal) clothing and then reciting the *Talbiyyah*. It has obligations, *Sunans* and prohibitions. They are as follows:

#### **Things Obligatory for *Ihram***

The obligations are the deeds that if one of them is left off, blood (i.e. sacrifice of an animal) is required from the person who did not perform, if unable, then he must fast ten days. The obligations of *Al-Ihram* are three and they are the following:

1. Assuming *Al-Ihram* from the *Miqat*: This is the place that the *Shari'ah* has fixed where *Al-Ihram* is assumed and it is

not permissible to pass it without *Ihram* for whoever wants (to perform) *Al-Hajj* or *Al-'Umrah*. Ibn 'Abbas, may Allāh be pleased with him, said:

“The Messenger of Allāh ﷺ made the *Miqat* for the people of Al-Madinah, Dhul-Hulayfah; and for the people of Ash-Sham, Al-Juhfah; and for the people of Najd, Qarn-ul-Manazil; and for the people of Al-Yemen, Yamlam. They are for them (these places) and whoever passes by them that is not of their people, for those who want to perform *Al-Hajj* or *Al-'Umrah*. And for whoever is nearer (to Makkah) than them, then he makes the *Talbiyyah* for assuming *Ihram* from his people (i.e. his home), and so forth, until even the people of Makkah make the *Talbiyyah* for *Ihram* from it (Makkah).” (Al-Bukhari)

2. Removal of stitched clothing: One in *Ihram* (*Al-Muhrim*) does not wear a *Thawb* (long robe-like garment), shirt or hooded robe. He does not wear a turban and he never covers his head with anything. Likewise, he does not wear leather socks, nor shoes (which cover the entire foot). This is due to the Prophet's statement:

«لَا يَلْبَسُ الْمُحْرِمُ الثَّوْبَ وَلَا الْعِمَامَةَ وَلَا السَّرَاوِيلَ وَلَا الْبُرَائِسَ وَلَا الْخِفافَ، إِلَّا مَنْ لَمْ يَجِدْ نَعْلَيْنِ فَلْيَلْبَسْ خُفَّيْنِ، وَلْيَقْطَعْهُمَا مِنْ أَسْفَلِ الْكَعْبَتَيْنِ»

«The Muhrim (person in Ihram) does not wear the Thawb (a long robe-like garment), turbans, pants, hooded robes or leather socks, except for whoever cannot find two sandals, then he wears two leather socks and he should cut them below the ankles.» (Al-Bukhari)

Likewise, he does not wear any clothing that has had saffron or *Wars* (a type of perfume) applied to it. The woman does not wear the face veil and she does not wear gloves. This is due to what Al-Bukhari related concerning the prohibition of that (i.e. these aforementioned things).

3. *At-Talbiyyah*: This is the saying:

«لَبَّيْكَ اللَّهُمَّ لَبَّيْكَ، لَبَّيْكَ لَا شَرِيكَ لَكَ لَبَّيْكَ، إِنَّ الْحَمْدَ وَالنَّعْمَةَ لَكَ وَالْمُلْكَ،  
لَا شَرِيكَ لَكَ»

*Labbayk Allaahumma labbayk. Labbayka la shareeka laka labbayk. Innal hamda wan-ni'mata laka wal-mulk. La shareeka lak.*

"I am here at Your service, O Allāh! I am here at Your service. I am here at Your service. You have no partner. I am here at Your service. Verily the praise, and the favor are Yours, and also the sovereignty. You have no partner."

One in *Ihram* says this when he begins his *Ihram* while he is at the *Miqat*. He does not neglect (saying) it and it is recommended to repeat it, raise the voice with it and say it again at every appropriate occasion (during travel), whether stopping, or setting out, or (before) the start of the prayer, or after completing it or meeting friends.

### **The Sunan Acts of Ihram**

*As-Sunan* (the recommended acts) are those deeds that if the *Muhrim* leaves them off, he is not obligated to sacrifice an animal regarding them. However, in leaving them off, he misses a great reward. These deeds are the following:

1. Performing *Ghusl* (complete bathing) for *Ihram*, even for the woman in postnatal bleeding (after childbirth) or the woman who is menstruating. This is based upon the fact that the wife of Abu Bakr, may Allāh be pleased with him, gave birth while she was intending to perform *Hajj*, so the Messenger ﷺ ordered her to perform *Ghusl* (complete bathing). (Muslim)
2. Assuming *Ihram* in an upper garment (worn over the shoulders) or a lower garment (affixed at the waist) that are white and clean. This is based upon the Prophet's actions.
3. Assuming *Ihram* after an optional or obligatory prayer (*Salah*).
4. Clipping the nails, trimming the moustache, plucking out

the underarm hairs and shaving the hair of the pubic region prior to beginning *Ithram* because the Prophet ﷺ did so.

5. Repeating the *Talbiyyah* and starting it again when a new situation occurs, whether upon setting out, stopping or offering prayer. This is due to the Prophet's statement:

«مَنْ لَبَّى حَتَّى تَغْرُبَ الشَّمْسُ أَمْسَى مَغْفُورًا لَهُ»

«Whoever says the *Talbiyyah* until the sun sets, will come upon evening with his sins forgiven.» (Ibn Taymiyyah in his book, *Al-Mansik* and he did not reference it.)

6. Making supplication and sending *As-Salah* (prayer for blessings and mercy) upon the Prophet ﷺ after the *Talbiyyah*. This is because the Messenger of Allāh ﷺ used to ask his Lord for Paradise and seek His protection from the (Hell) Fire after completing the *Talbiyyah*. (Ash-Shafi'i and Ad-Daraqutni)

### **The Prohibited Acts During *Ithram***

The prohibitions are the deeds that are not allowed and if the believer does them, he is obligated to sacrifice a sheep as compensation or fast or feed (poor people). These deeds are as follows:

1. Covering the head with any head covering.
2. Shaving the hair or cutting it, even if it is a little. It makes no difference whether it is the hair of the head or other than it.
3. Clipping the nails, whether they are the nails of the hands or the feet.
4. Applying perfume.
5. Wearing any type of stitched garment (i.e. a garment that has a seam in it).
6. Killing game animals of the land. This is due to Allāh the Almighty's statement:



﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ﴾

«O you who believe! Do not kill the game animals while you all are in Ihram (for Al-Hajj or Al-'Umrah).» (5:95)

7. Petting (i.e. caressing, fondling, etc.) that is done before sexual intercourse, such as kissing and similar things. This is due to Allāh the Almighty's statement:

﴿فَلَا رَفَثَ وَلَا فُسُوقَ وَلَا جِدَالَ فِي الْحَجِّ﴾

«So there should be no Rafath, nor sinful transgression, nor quarreling during Al-Hajj.» (2:197)

The meaning of *Rafath* is those things that are done before sexual intercourse (i.e. petting) and everything that leads to it.

8. The marriage contract or its proposal. This is due to the Prophet's statement:

﴿لَا يَنْكِحُ الْمُحْرِمُ وَلَا يُنْكَحُ وَلَا يَخْطُبُ﴾

«The person in Ihram does not perform the marriage (of someone else), nor is he married, nor does he propose (marriage).» (Muslim)

9. Sexual intercourse. This is due to Allāh the Almighty's statement:

﴿فَلَا رَفَثَ وَلَا فُسُوقَ وَلَا جِدَالَ فِي الْحَجِّ﴾

«So there should be no Rafath, nor sinful transgression, nor quarreling during Al-Hajj.» (2:197)

*Rafath* includes sexual intercourse and its precursors.

### **The Ruling of these Forbidden Acts**

The ruling of these forbidden acts: For the first five, whoever does one of them, he must make a compensation, which is fasting three days, or feeding six poor people with a *Mudd* of wheat each, or slaughtering a sheep. This is due to Allāh the Almighty's statement:

﴿فَن كَانَ مِنْكُمْ مَّرِيضًا أَوْ بِهِ أَذًى مِنْ رَأْسِهِ فَفِدْيَةٌ مِنْ صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ﴾

﴿So whoever among you is ill or he has an ailment on his head (i.e. his hair), then he must make a compensation of fasting or giving charity or sacrificing (an animal).﴾ (2:196)

However, in the case of killing a game animal, then his penalty is to slaughter a domestic livestock animal (i.e. a camel, cows or sheep) equivalent to it. This is due to Allāh the Almighty's statement:

﴿فَجَزَاءٌ مِمَّا قَتَلَ مِنَ الْأَنْعَامِ﴾

﴿So the compensation is (slaughtering) from the domestic livestock animals that which is similar to what he killed.﴾ (5:95)

As for the things that lead to sexual intercourse, then the one who does them must sacrifice an animal, meaning to slaughter a sheep. Concerning sexual intercourse, then it nullifies the *Hajj* completely. However, it is still mandatory to continue with it (i.e. the remaining acts of *Hajj*) until it is complete and the one who does so must sacrifice a camel. If he cannot find one, he must fast ten days, and along with that, he must make up (for the *Hajj*) another year. This is due to what Malik related in *Al-Muwatta'* that 'Umar bin Al-Khattab, 'Ali bin Abi Talib and Abu Hurayrah were all asked about a man who had sexual relations with his wife while he was in *Ihram* at *Al-Hajj*. They said:

"They continue to perform (the remaining *Hajj* rites) for their own face (i.e. to save them embarrassment) until they complete their *Hajj*. Then they must perform *Hajj* (again) in the future and they must sacrifice an animal."

Concerning the marriage contract and its engagement, as well as the rest of the sins, like backbiting, gossiping and everything that enters under the wording *Al-Fusuq* (sinful transgression), the person must repent and seek (Allāh's) forgiveness. This is because there is nothing reported from the *Shari'ah* that has made any expiation for them other than repentance and seeking (Allāh's) forgiveness.

## The Second Pillar: At-Tawaf

*Tawaf* is going around the House (*Ka'bah*) seven circuits. It has conditions, *Sunan* (recommended acts) and manners that its reality depends upon. They are the following:

### Conditions for Its Validity

And they are as follows:

1. Having intentions when beginning it, as actions are based upon the intentions. Thus, the person who wants to perform *Tawaf* must have the intention for *Tawaf*. This is that the heart has firm resolve to perform *Tawaf* in order to worship Allāh the Most High and obey Him, the Mighty and Sublime.
2. Purity from filth and defilement, due to the *Hadith* below stating that *Tawaf* around the House (*Ka'bah*) is like the prayer.
3. Covering the private areas of the body, as *Tawaf* is like the prayer. This is due to the Prophet's statement:

«الطَّوَّافُ حَوْلَ الْبَيْتِ مِثْلُ الصَّلَاةِ، إِلَّا أَنَّكُمْ تَتَكَلَّمُونَ فِيهِ، فَمَنْ تَكَلَّمَ فَلَا يَتَكَلَّمُ إِلَّا بِخَيْرٍ»

«*Tawaf around the House (Ka'bah) is like the prayer, except that you all speak during it. Therefore, whoever speaks, let him not speak except with good (words).*» (At-Tirmithi)

Therefore, with this, whoever performs *Tawaf* with the intention to do so, or he performs *At-Tawaf* while in a state of defilement or with impurity on him, or he performs *At-Tawaf* with the private areas of his body exposed, then his *Tawaf* is invalid and he must repeat it.

4. That the *Tawaf* around the House (*Ka'bah*) should be inside of the *Masjid*, even if it is done at a distance from the House (*Ka'bah*)
5. That the House (*Ka'bah*) should be on the left of the person performing *At-Tawaf*.

6. That the *Tawaf* should be seven circuits (trips around) and that the person should begin with the Black Stone and end with it, because the Prophet ﷺ did this, as is reported in the *Sahih*.

7. That the circuits should be performed in close succession. There should be no separation between them without a need. If a person pauses between them and abandons performing them in close succession without a need (to pause), his *Tawaf* is invalidated and it is obligatory upon him to repeat it.

### **The Sunan Acts**

And they are the following:

1. *Ar-Ramal*, which is a Sunnah for the men who are able to do it and it is not for the women.<sup>[1]</sup> In actuality it means that the person performing *At-Tawaf* walks quickly with short, close foot steps. It is only Sunnah in the *Tawaf-ul-Qudum* (the *Tawaf* of Arrival) and only in the first three circuits of it.

2. *Al-Idhtiba'*, and it is uncovering the right shoulder.<sup>[2]</sup> It is only a Sunnah for *Tawaf-ul-Qudum* (the *Tawaf* of Arrival). It is also only for the men and not the women, and it is to be done in the entire seven circuits.

3. Kissing the Black Stone when beginning *At-Tawaf* if it is possible. If it is not possible, then it is sufficient to touch it with the hand or point towards it if it is not feasible to touch it, because the Prophet ﷺ did that.

4. Saying, when beginning the first circuit:

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[1] Muslim recorded from Ibn 'Umar that the Prophet ﷺ performed *Ramal* from the Black Stone to the Black Stone three times and he walked four times.

[2] Ahmad recorded that the Prophet ﷺ and his Companions performed *'Umrah* from al-Ji'ranah, exposing their shoulder. They put their upper sheet under the armpit and around the left neck and shoulder area.

«بِسْمِ اللَّهِ، وَاللَّهُ أَكْبَرُ. اللَّهُمَّ إِيْمَانًا بِكَ وَتَصْدِيقًا بِكِتَابِكَ، وَوَفَاءً بِعَهْدِكَ، وَاتِّبَاعًا لِسُنَّةِ نَبِيِّكَ مُحَمَّدٍ ﷺ».

*Bismillaah, Allaahu Akbar. Allaahumma eemanan bika wa tasdeeqan bi-kitabika, wa wafa'an bi'ahdika, wat-tiba'an li-sunnati nabiyy-yika, Muhammad ﷺ.*

“With the Name of Allāh, Allāh is the Most Great. O Allāh! With faith in You, and belief in Your Book, and fulfillment of Your promise and following the Sunnah of Your Prophet, Muhammad ﷺ.”

5. Making supplications during *Tawaf*, and it is not limited or specified (to any particular supplication). Rather, each person who is performing *Tawaf* should supplicate with whatever Allāh inspires him to say. Yet, it is Sunnah to conclude each circuit by saying:

﴿رَبَّنَا آتِنَا فِي الدُّنْيَا حَسَنَةً وَفِي الْآخِرَةِ حَسَنَةً وَقِنَا عَذَابَ النَّارِ﴾

﴿Our Lord! Give us good in this life and good in the Hereafter, and protect us from the punishment of the (Hell) Fire.﴾ (2:201)

6. Touching the Yemeni Corner with the hand and kissing the Black Stone every time one passes by them during his *Tawaf*, because the Prophet ﷺ did so, as is recorded in the *Sahih*.

7. Supplicating at *Al-Multazam* after completing *Tawaf*. *Al-Multazam* is the place that is between the door of the House (*Ka'bah*) and the Black Stone. This is due to Ibn 'Abbas, may Allāh be pleased with him, doing so.

8. Praying two *Rak'ahs* (of *Salah*) after completing *Tawaf* behind the standing place (*Maqam*) of Ibrahim. In these two *Rak'ahs* one recites *Surahs Al-Kafirun* and *Al-Ikhlās* after *Al-Fatihah*. This is due to Allāh the Almighty's statement:

﴿وَاتَّخِذُوا مِنْ مَّقَامِ إِبْرَاهِيمَ مُصَلًّى﴾

﴿And take the standing place (Maqam) of Ibrahim as a place of prayer (Salah).﴾ (2:125)

9. Drinking from the water of Zamzam and using a lot of it after completing the prayer of two Rak'ahs.

10. Returning (back to the Ka'bah) to touch the Black Stone before going out to the place of Sa'y (walking between As-Safa and Al-Marwah)

### **Note:**

The evidences for all of what has preceded is found in the clear practices of the Messenger ﷺ during his Farewell Hajj (before his death)

### **Manners**

They are as follows:

1. *Tawaf* should be performed with humbleness and with an attentive heart. There should be feelings of the magnificence of Allāh the Mighty and Majestic, and fear of Him, while hoping for that which is with Him (i.e. rewards and Paradise).

2. That the person performing *At-Tawaf* should not speak without a need to do so. If the person speaks, he should only say that which is good. This is due to the Prophet's statement:

«فَمَنْ تَكَلَّمَ فَلَا يَتَكَلَّمْ إِلَّا بِخَيْرٍ»

«So whoever speaks, then let him only speak good (words).»

(At-Tirmithi)

3. That one should not harm anyone with words or deeds, as harming the Muslim is forbidden, especially at the House of Allāh the Most High.

4. That one should utter remembrances of Allāh often, as well as supplications and prayers for blessings upon the Prophet ﷺ.

### The Third Pillar: As-Sa'y

As-Sa'y is to walk between As-Safa and Al-Marwah, coming and going (back and forth) with the intention of worshipping (Allāh). It is a pillar of *Al-Hajj* and *Al-'Umrah*. This is due to the statement of Allāh the Most High:

﴿إِنَّ الصَّفَا وَالْمَرْوَةَ مِن سَعْيِ اللَّهِ﴾

«Verily As-Safa and Al-Marwah are from the symbols of Allāh.» (2:158)

And the statement of the Prophet ﷺ:

«اسْعَوْا فَإِنَّ اللَّهَ كَتَبَ عَلَيْكُمُ السَّعْيَ»

«Perform As-Sa'y, for verily Allāh has enjoined As-Sa'y upon you all.» (Ibn Majah, Ahmad and Ash-Shafi'i. He (Ibn Hajar) said in *Al-Fath* that it is *Hasan* due to its numerous routes of transmission.)

It has conditions, *Sunan* (recommended acts) and manners. They are as follows:

### The Conditions for the Validity of As-Sa'y

They are as follows:

1. The intention. This is due to the Prophet's statement:

«إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ»

«Deeds are judged by their intentions.» (Al-Bukhari)

Therefore, it is necessary to have the intention to perform worship when making As-Sa'y, in obedience to Allāh and carrying out His command.

2. Keeping the proper order between it and *At-Tawaf* by performing *At-Tawaf* before As-Sa'y.

3. Making its trips in close succession. However, a brief break between them is not harmful as long as there is a need for it.

4. Completing all seven trips. If one trip or part of a trip is left out, the *Sa'y* is not acceptable, as its actuality is established upon completing its trips.

5. It should occur after the correct performance of *Tawaf*, regardless of whether the *Tawaf* is obligatory (*Wajib*) or recommended (*Sunnah*). However, it is better if it is performed after an obligatory (*Wajib*) *Tawaf*, like *Tawaf-ul-Qudum*, or a *Tawaf* that is a pillar (*Rukn*), like *Tawaf-ul-Ifadhah*.

### The Sunan of As-Sa'y

They are as follows:

1. *Al-Khabab*, which is moving quickly between the two green (markers) downward sloped places at the two ends of the old valley, where Hajar, the mother of Isma'il ran. It is *Sunnah* (recommended) for men who are able to do it, and not for the weak and the women.<sup>[1]</sup>

2. *Al-Wuquf* (standing) upon As-Safa and Al-Marwah to supplicate on top of them.

3. Supplicating on both As-Safa and Al-Marwah during every trip of the seven trips between them.

4. Saying *Allāhu Akbar* (Allāh is the Most Great) three times when ascending both As-Safa and Al-Marwah during every trip. Likewise, saying:

«لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ، وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ، لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ، صَدَقَ وَعْدُهُ، وَنَصَرَ عَبْدُهُ، وَهَزَمَ الْأَكْزَابَ وَحْدَهُ»

*La ilaha illal-laahu wah-dahu la shareeka lah. Lahul-mulku wa lahum-hamdu, wa Huwa 'ala kulli shay'in*

[1] Ash-Shafi'i narrated that 'A'ishah, may Allāh be pleased with her, saw women running quickly during *Sa'y* and she said, "Do you not have an example in us (the female Companions)?" Then she said, "There is no *Sa'y* upon you." Meaning trotting and moving at a quick pace.



*Qadeer. La ilaha illal-laahu wah-dahu, sadaqa wa'dahu, wa nasara 'abdahu, wa hazamal-ahzaba wahdahu.*

"There is none worthy of being worshipped except Allāh alone, Who has no partner. His is the sovereignty and to Him belongs the praise, and He has power over all things. There is none worthy of being worshipped except Allāh alone. He was truthful in His promise, He helped His servant and He defeated the clans (of disbelievers) alone."

5. Performing As-Sa'y immediately after At-Tawaf, with the person not taking a break between them without an Islamically sanctioned excuse.

### **Manners for As-Sa'y**

They are as follows:

1. To go out to it from the gate of As-Safa, in following the statement of Allāh the Most High:

﴿إِنَّ الصَّفَا وَالْمَرْوَةَ مِنْ شَعَائِرِ اللَّهِ فَمَنْ حَجَّ الْبَيْتَ أَوْ اعْتَمَرَ فَلَا جُنَاحَ عَلَيْهِ أَنْ يَطَّوَّفَ بِهِمَا وَمَنْ تَطَوَّعَ خَيْرًا فَإِنَّ اللَّهَ شَاكِرٌ عَلِيمٌ﴾

﴿Verily As-Safa and Al-Marwah are from the symbols of Allāh. So whoever makes Hajj (pilgrimage) to the House (Ka'bah) or 'Umrah (lesser Hajj), there is no sin on him that he goes back and forth between them. And whoever does extra good, then verily Allāh is Most Appreciative and All-Knowing.﴾ (2:158)

2. That the person who performs As-Sa'y should be in a state of purity.

3. That the person should perform As-Sa'y walking (on foot) if he is able to do so without any difficulty.

4. That the person should utter abundant statements in the remembrance of Allāh, and supplications, and he should busy himself with them besides everything else.<sup>[1]</sup>

<sup>[1]</sup> This is due to what At-Tirmithi related and graded *Sahih* that the

5. That he lower his gaze from looking at forbidden things and he guard his tongue from saying evil things.

6. That he does not harm any of the people performing As-Sa'y or other people who are passing, in any way, whether it be a statement or an action.

7. The person should feel within himself his lowliness, his poorness and his need of Allāh the Most High to guide his heart, purify his soul and correct his situation.

### **The Fourth Pillar: Standing (Al-Wuqoof) at 'Arafat:**

Standing at 'Arafah is the fourth pillar of the pillars of Al-Hajj. This is due to the Prophet's statement:

«الْحَجُّ عَرَفَةٌ»

«Al-Hajj is 'Arafah.» (Ahmad and At-Tirmithi and it is *Sahih*.)

In actuality, it is to be present at the place that is called 'Arafat, for a moment or more with the intention of standing there during its valid time from after *Zuhr* (midday) on the 9th of Dhul-Hijjah to *Fajr* on the 10th of Dhul-Hijjah. Standing at 'Arafat has obligations, recommended acts (*Sunan*) and manners that make it complete. They are as follows:

### **The Obligatory Acts (Wajibat)**

They are as follows:

1. Being present at 'Arafat on the 9th of Dhul-Hijjah after high noon until sunset.
2. Spending the night at Muzdalifah after coming down

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Prophet ﷺ said :

«إِنَّمَا جُعِلَ رَمِي الْجِمَارِ وَالسَّعْيُ بَيْنَ الصَّفَا وَالْمَرْوَةِ لِإِقَامَةِ ذِكْرِ اللَّهِ تَعَالَى»

«Verily the throwing of stones at the pillars and As-Sa'yi between As-Safa and Al-Marwah have only been instituted to establish the remembrance of Allāh the Most High.»

from 'Arafat on the 10th night of Dhul-Hijjah (i.e. the night of the 9th in English terms).

3. Throwing pebbles at the stone pillar of Al-'Aqabah on the Day of *An-Nahr* (Sacrifice).

4. Shaving or shortening the hair after stoning the pillar of Al-'Aqabah on the Day of *An-Nahr*.

5. Spending the night at Mina for three nights, which are the 11th, 12th and 13th nights (i.e. the 10th, 11th and 12th of Dhul-Hijjah and leaving on the 13th) or two nights for whoever is in a hurry. If he stays two nights, they are the 11th and 12th nights (i.e. the 10th and the 11th of Dhul-Hijjah and leaving on the 12th).

6. Throwing pebbles at the three stone pillars after midday on each of the three Days of *At-Tashriq* or two days (if the person only stays until the 12th of Dhul-Hijjah).

Note: The evidences for these obligations (*Wajibat*) are the Prophet's actions, and he ﷺ said:

«لَتَأْخُذُوا عَنِّي مَنَاسِكَكُمْ»

«Verily you must take your Hajj rites from me.» (Muslim)

And he ﷺ said:

«حُجُّوا كَمَا رَأَيْتُمُونِي أَحُجُّ»

«Perform Hajj just as you have seen me performing Hajj.»<sup>[1]</sup>

And he ﷺ said:

«قِفُوا عَلَى مَشَاعِرِكُمْ فَإِنَّكُمْ عَلَى إِزْبٍ مِنْ إِزْبِ أَبِيكُمْ إِبْرَاهِيمَ»

«Stand at your sacred places, for verily all of you are upon a heritage from the legacy of your father Ibrahim.» (At-Tirmithi, who said it is *Sahih*.)

[1] In the *Sahih*.

### The Sunan Acts

They are as follows:

1. Going out to Mina on the Day of *Tarwiyah*, which is the 8th of Dhul-Hijjah, and spending the night there (which is the 9th night of Dhul-Hijjah). Also one should not leave Mina (on the 9th) until after sunrise and one should pray five prayers (*Salah*) there (i.e. beginning with *Salat-uz-Zuhr* on the 8th of Dhul-Hijjah and ending with *Salat-ul-Fajr* on the 9th of Dhul-Hijjah).
2. The person should be present at Namirah after midday and pray *Salat-uz-Zuhr* and *Salat-ul-Asr*, combined and shortened, with the Imam.
3. The person should go to the area of standing ('Arafat) after offering *Salat-uz-Zuhr* and *Salat-ul-Asr* with the Imam. The person should remain at his place of standing, remembering Allāh and making supplications until sunset.
4. Delaying the performance of *Salat-ul-Maghrib* until one arrives at *Jam'* (Muzdalifah), and then praying *Salat-ul-Maghrib* and *Salat-ul-Isha'* there together and delayed (i.e. in the time of *Isha'*).
5. Standing facing the *Qiblah* while remembering Allāh and making supplications at the Sacred Site (*Al-Mash'ar-ul-Haram* or *Jabal Quzah*) until the sky has become yellowish and clear (just before sunrise).
6. Keeping the recommended sequence between throwing pebbles at the Pillar of Al-'Aqabah, sacrificing an animal, shaving the head and performing *Tawaf-uz-Ziyarah* (also known as *Tawaf-ul-Ifadhah*).
7. Performing *Tawaf-uz-Ziyarah* on the Day of *An-Nahr* before sunset.

### The Manners

They are as follows:

1. Heading out from Mina on the morning of the 9th to

Namirah taking the way known as *Dhabb* as this is what the Prophet ﷺ did.

2. Performing complete bathing after midday for standing at 'Arafat. This is even legislated for the menstruating woman and the woman having postnatal bleeding.

3. Standing at the place where the Messenger of Allāh ﷺ stood, which is at the large, spread out rock at the bottom of the Mountain of Mercy (Jabal-ur-Rahmah) that is in the middle of 'Arafat.

4. Uttering statements in the remembrance of Allāh and supplicating in abundance while facing the *Qiblah* at one's place of standing until sunset.

5. *Al-Ifadhah* (coming down) from 'Arafat by taking the way known as *Al-Ma'zamin* and not the way known as *Dhabb* from which the person came. This is because it is from the guidance of the Messenger ﷺ that he would come by one route and return by another route.

6. Having tranquility while walking and not rushing in it. This is due to the Prophet's statement:

«يَا أَيُّهَا النَّاسُ! عَلَيْكُمْ بِالسَّكِينَةِ، فَإِنَّ الْبِرَّ نَيْسَ بِالْإِضَاعِ»

«O people! You must (walk) with tranquility. For verily righteousness is not in *Al-Idha'*.» (Al-Bukhari)

*Al-Idha'* is rushing.

7. Make *At-Talbiyyah* often on the way to Mina, 'Arafat, Muzdalifah and (back to) Mina.<sup>[1]</sup> The *Talbiyyah* should be said until the person begins throwing pebbles at the Pillar of Al-'Aqabah.

8. Picking up seven pebbles from Muzdalifah to use for throwing at the Pillar of Al-'Aqabah.

<sup>[1]</sup> All of these manners are confirmed in the authentic Sunnah. Therefore, there is no issue except that it is taken from a statement or action of the Messenger ﷺ.

9. Leaving Muzdalifah after the sky has become yellowish and before sunrise.

10. Hurrying one's walking pace at the Valley of Muhassir, and making the riding animal or car go faster for the distance of a stone's throw if there is no fear of harm.

11. Throwing pebbles at the Pillar of Al-'Aqabah anytime between sunrise and midday.

12. Saying *Allāhu Akbar* (Allāh is the Most Great) with each pebble that one throws.

13. Slaughtering the sacrificial animal oneself or witnessing its sacrifice or slaughter. Also, one should say:

«اللَّهُمَّ هَذَا مِنْكَ وَإِلَيْكَ، اللَّهُمَّ تَقَبَّلْ مِنِّي كَمَا تَقَبَّلْتَ مِنْ إِبْرَاهِيمَ خَلِيلِكَ»

*Allaahumma hadha minka wa ilayka. Allaahumma taqabbal minnee kama taqabbalta min Ibraheema Khaleelika.*

“O Allāh, this is from You and to You. O Allāh, accept this from me just as you accepted from Your *Khalil* (friend) Ibrahim.”

This should be said after saying:

(بِسْمِ اللَّهِ وَاللَّهُ أَكْبَرُ)

*Bismillaah, Allaahu Akbar.*

“With the Name of Allāh, Allāh is the Most Great.” which is obligatory to say.

14. Eating from the sacrificial animal, as the Prophet ﷺ used to eat from the liver of his slaughtered animal.

15. Walking to stone the three pillars during the Days of *At-Tashriq*.

16. Saying *Allāhu Akbar* (Allāh is the Most Great) with (the throwing of) each pebble. Also it is encouraged to say:

«اللَّهُمَّ اجْعَلْهُ حَجًّا مَبْرُورًا وَسَعْيًا مَشْكُورًا، وَذَنْبًا مَغْفُورًا»

*Allaahummaj'alhu Hajjan Mabrooran wa sa'yan mashkoooran wa dhanban maghfooran.*

"O Allāh! Make it a blessed and accepted *Hajj*, an appreciated effort and forgiven sin."

17. Stopping for supplication while facing the *Qiblah* after stoning the first and second stone pillars, but not the third. It is not recommended to make any supplication at the third stone pillar. The person should merely stone it and leave.

18. Throwing pebbles at the Pillar of Al-'Aqabah (the third and largest pillar) from the center of the valley while facing it and placing the House (*Ka'bah*) on one's left and Mina on one's right.

19. The saying:

«أَيُّوْنَ تَائِبُوْنَ عَابِدُوْنَ، لِرَبَّنَا حَامِدُوْنَ، صَدَقَ اللهُ وَعْدُهُ، وَنَصَرَ عَبْدُهُ، وَهَزَمَ الْأَخْزَابَ وَخُدَّهُ»

*Ayiboona ta'iboona 'abidoon, li-Rabbina haamidoon.  
Sadaqallaahu wa'dahu, wa nasara 'abdahu wa  
hazamal-ahzaba wahdah.*

"We are returning, repenting, worshipping and to our Lord making praise. Allāh was truthful to His promise, He helped His servant and defeated the clans (of disbelievers) alone."

for the person who is leaving Makkah, as the Prophet ﷺ used to say this when he would leave it.

### ***Al-Ihsar (Being Prevented)***

Whoever is prevented, meaning he is prevented from entering into Makkah or standing at 'Arafat by an enemy, or due to an illness, or any similar type of forced prevention, he must slaughter a sheep, camel, or cow at the place that he is stopped. He also may send it (his sacrificial animal) to the Sacred Sanctuary (*Al-Haram*) if that is

possible for him (i.e. for it to be slaughtered there),<sup>[1]</sup> and then he removes his *Ihram*. This is due to the statement of Allāh the Most High:

﴿إِنْ أَحْصَيْتُمْ قَا اسْتَيْسَرَ مِنَ الْهَدْيِ﴾

«So if you are prevented (from completing them), sacrifice a Hady (animal) such as you can afford.» (2:196)

### **Tawaf-ul-Wada' (Farewell Tawaf)**

*Tawaf-ul-Wada'* is one of the three *Tawafs* of *Al-Hajj*. It is an obligatory *Sunnah*. Whoever leaves it off without an excuse, he must offer a sacrifice. Whoever leaves it off due to a valid excuse, then he is not obligated to offer a sacrifice. The person performing *Hajj* or '*Umrah* does it when he is ready to return to his family (i.e. his homeland) after his completion of his *Hajj* or '*Umrah and his honored stay in Makkah is finished. He performs it during the last hour he wants to leave Makkah, so that when he has finished his *Tawaf*, he does not preoccupy himself with anything. Rather he leaves Makkah immediately. If he stays for a time afterwards for buying and selling, and similar things without a pressing need that calls for that, he must repeat the *Tawaf*. This is due to the Prophet's statement:*

«لَا يَنْفِرَنَّ أَحَدُكُمْ حَتَّى يَكُونَ آخِرُ عَهْدِهِ بِالْبَيْتِ»

«None of you should leave until the last of his acts is at the House (Ka'bah).» (Muslim)

### **How to perform Al-Hajj and Al-'Umrah**

The way to perform *Al-Hajj* and *Al-'Umrah* is as follows:

The person who intends to perform one of the two rites (*Al-*

[1] Some of the people of knowledge hold the view that if one is incapable of offering a sacrifice, then he fasts for ten days, by analogy to one who neglected an obligatory element of *Hajj* and was not able to slaughter.



*Hajj* or *Al-'Umrah*) clips his nails, trims his moustache, shaves his pubic hair and plucks out the hairs of his armpits. Then he performs *Ghusl* (complete bathing) and he wears an *Izar* (lower garment affixed at the waist like a bath towel) and a *Rida'* (a garment worn over the shoulders) that are both clean and white. He also wears two sandals. When he reaches the *Miqat*, he prays an obligatory prayer or an optional prayer and then he makes intention to perform his ritual (*Al-Hajj* or *Al-'Umrah*) by saying:

«لَبَّيْكَ اللَّهُمَّ لَبَّيْكَ حَجًّا»

*Labbayka Allaahumma Labbayka Hajjan.*

"I am here at Your service O Allāh, I am here for performing *Hajj*."

This is if the person wants to perform *Al-Ifrad* (i.e. *Hajj* only). If the person wants to perform *At-Tamattu'* (i.e. *'Umrah* followed by *Hajj* with a break between them) he says:

«لَبَّيْكَ اللَّهُمَّ لَبَّيْكَ عُمْرَةً»

*Labbayka Allaahumma Labbayka 'Umran.*

"I am here at Your service O Allāh, I am here for performing *'Umrah*."

If he wants to perform *Al-Qiran* (i.e. *'Umrah* followed by *Hajj* without coming out of *Ihram* between them) he says:

«لَبَّيْكَ اللَّهُمَّ لَبَّيْكَ حَجًّا وَعُمْرَةً»

*Labbayka Allaahumma Labbayka Hajjan wa 'Umran.*

"I am here at Your service O Allāh, I am here for performing *Hajj* and *'Umrah*."

He may also make a condition with His Lord by saying:

«إِنَّ مَجْلِي مِنَ الْأَرْضِ حَيْثُ تَخْبِسُنِي»

*Inna mahallee minal-ardhi haithu tahbisunee.*

“Verily my place in the earth is wherever You stop me.”<sup>[1]</sup>

Thus, if something happens to prevent him from continuing his *Hajj* or *‘Umrāh*, such as illness or something similar, the person comes out of his state of *Ihram* and there is no sin on him.

Then the person continues saying *At-Talbiyyah* while raising his voice with it without over exerting himself, unless the person is a woman, as she does not say *At-Talbiyyah* aloud. There is no harm in her raising her voice to the level where she and another woman who is with her can hear it.

It is recommended to make supplications and send prayers of blessings upon the Prophet ﷺ whenever finished saying *At-Talbiyyah*. Likewise, it is recommended to begin saying *At-Talbiyyah* again whenever a new situation occurs, such as setting off upon the journey, stopping at a place, the performance of prayer (*As-Salah*), or meeting friends. The person should restrain his tongue from saying things other than the remembrance (*Dhikr*) of Allāh the Most High, and he should restrain his gaze from what Allāh has made forbidden for him to look at.

Similarly, on his way (to Makkah) he should try to increase his righteous behavior and goodness, hoping that his *Hajj* will be blessed and accepted. Therefore, he should be kind to those who are in need and he should smile happily and cheerfully in the faces of friends. He should speak gently to them, giving them the greetings of peace and offering them

[1] This is based on a *Hadīth* recorded by Muslim from Ibn ‘Abbas that the Prophet ﷺ said to Dhabā’ah bint Az-Zubayr:

«حُجِّي وَاسْتَرْطِي أَنْ مَجَلِّي حَيْثُ تَخْبِسُنِي»

«Perform Hajj and make a condition by saying, “My place is wherever You (Allāh) stop me.”»

This was because she was sick, so she asked the Prophet ﷺ about it and he guided her to the mentioned method of stipulating a condition (for one’s *Hajj*).

food. When the person arrives in Makkah, it is recommended for him to perform *Ghusl* (complete bathing) for entering it. When he arrives at Makkah, he should enter it from its uppermost part. When the person arrives at the Sacred Mosque (*Al-Masjid Al-Haram*), he should enter it from the Door of Bani Shaybah (which is called *Bab-us-Salam*). Upon entering (the Mosque) the person should say:

«بِسْمِ اللَّهِ وَبِإِلَهِهِ وَإِلَى اللَّهِ، اللَّهُمَّ افْتَحْ لِي أَبْوَابَ فَضْلِكَ»

*Bismillaahi wa billaahi wa ilal-laah. Allaahummaf-tah lee abwaba fadhlika.*

“With the Name of Allāh, and by Allāh, and to Allāh. O Allāh! Open for me the doors of Your bounty.”

When he sees the House (*Ka'bah*), he should raise his hands and say:

«اللَّهُمَّ أَنْتَ السَّلَامُ وَمِنْكَ السَّلَامُ فَحَيِّتَا رَبَّنَا بِالسَّلَامِ، اللَّهُمَّ زِدْ هَذَا الْبَيْتَ تَشْرِيفًا وَتَعْظِيمًا وَتَكْرِيمًا وَمَهَابَةً وَبِرًّا، وَزِدْ مَنْ شَرَفَهُ وَكَرَّمَهُ وَمَنْ حَجَّهُ أَوْ اغْتَمَرَهُ تَشْرِيفًا وَتَعْظِيمًا وَتَكْرِيمًا وَمَهَابَةً وَبِرًّا، الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ كَثِيرًا كَمَا هُوَ أَهْلُهُ، وَكَمَا يَنْبَغِي لِكَرَمِ وَجْهِهِ وَعِزِّ جَلَالِهِ، وَالْحَمْدُ لِلَّهِ الَّذِي بَلَّغَنِي بَيْتَهُ وَرَأَيْتِي لَذَلِكَ أَهْلًا، وَالْحَمْدُ لِلَّهِ عَلَى كُلِّ حَالٍ، اللَّهُمَّ إِنَّكَ دَعَوْتَ إِلَى حَيْجِ بَيْتِكَ الْحَرَامِ وَقَدْ جِئْتُكَ لَذَلِكَ، اللَّهُمَّ تَقَبَّلْ مِنِّي وَاعْفُ عَنِّي، وَأَصْلِحْ لِي شَأْنِي كُلَّهُ، لَا إِلَهَ إِلَّا أَنْتَ»

*Allaahumma Antas-Salaamu wa minkas-salaamu fa hayyina Rabbana bis-salaam. Allaahumma zid hathal-bait tashreefan wa ta'dheeman wa takreeman wa mahaabatan wa birran. Wa zid man sharrafahu wa karramahu mimman Hajjahu awi'tamarahu tashreefan wa ta'dheeman wa takreeman wa mahaabatan wa birran. Al-hamdu lillaahi Rabbil-'aalameen katheeran, kama huwa ahluhu, wa kama yanbaghee li-karami wajhihi wa 'izzi jalaalihi. Wal-hamdu lil-laahil-lathee ballaghanee baitahu wa raanee li-thalika ahlan. Wal-hamdu lil-laahi 'ala kulli haalin. Allaahumma innaka da'awta ila*

*Hajji baitikal-haraami wa qad ji'tuka li-thalika. Allaahumma taqabbal minnee wa'fu 'annee, wa aslih lee sha'nee kullahu. Laa ilaaha illa Anta.*

"O Allāh! You are the Peace and from You comes peace. So give us life, our Lord, with peace. O Allāh! Increase this House in reverence, honor, esteem, dignity and goodness. And increase whoever reveres it and honors it from those who come to it for *Hajj* or *'Umrah*, in reverence, honor, esteem, dignity and goodness. All praise is due to Allāh, the Lord of all the worlds - abundant praise - as He deserves and as is befitting for the nobility of His Face and the glory of His Magnificence. And all praise is due to Allāh, Who brought me to His House and saw me as deserving of that. And all praise is due to Allāh under every circumstance. O Allāh! Verily, You called to the performance of *Hajj* to Your Sacred House and verily I have come to you for that. O Allāh! Accept from me, pardon me, and make right all of my affairs. There is none worthy of being worshipped except You."

Then the person proceeds to the area of *Tawaf* being in a state of purity and having his right shoulder exposed and his left one covered. He comes to the Black Stone and kisses it, or touches it, or points at it if he cannot kiss it or touch it. Then he faces the Stone and stands erect making his intention to perform *Tawaf* and he says:

«بِسْمِ اللَّهِ، وَاللَّهُ أَكْبَرُ، اللَّهُمَّ إِيْمَانًا بِكَ وَتَضَرُّعًا بِكِتَابِكَ، وَوَفَاءً بِعَهْدِكَ،  
وَأَبْغَاءَ لِسُنَّةِ نَبِيِّكَ مُحَمَّدٍ ﷺ»

*Bismillaahi wal-laahu Akbar. Allaahumma eemanan bika wa tasdeeqan bi-kitaabika wa wafa'an bi-'ahdika wat-tiba'an li-sunnati nabiyyika Muhammadin ﷺ.*

"With the Name of Allāh, and Allāh is the Most Great. O Allāh, with faith in You, and belief in Your Book, and fulfilling Your covenant, and following the Sunnah of Your Prophet, Muhammad ﷺ."

Then he begins *At-Tawaf*, placing the House (*Ka'bah*) on his left, and he performs *Ar-Ramal*, which is a brisk trot, if he is performing *Tawaf-ul-Qudum* (the *Tawaf* of Arrival) He should supplicate or make *Thikr* (remembrance of Allāh) or send prayers of blessings upon the Prophet ﷺ. He does this until he reaches the Yemeni Corner (*Ar-Rukn Al-Yamani*), which he touches with his hand. Then he completes his trip around with the supplication:

﴿رَبَّنَا آتِنَا فِي الدُّنْيَا حَسَنَةً وَفِي الْآخِرَةِ حَسَنَةً وَقِنَا عَذَابَ النَّارِ﴾

*Rabbana aatina fid-dunya hasanatan, wa fil-aakhirati hasanatan, wa qina 'athaaban-naar.*

﴿Our Lord! Give us good in this life, and good in the Hereafter, and protect us from the torment of the Fire.﴾ (2:201)

Then he continues his *Tawaf* with the second and third circuits around being done in the same manner. When he begins his fourth trip around, the person stops *Ar-Ramal* (the brisk trotting) and walks with tranquility until he finishes the remaining four circuits. When he finishes he goes to *Al-Multazam* (the area between the door of the *Ka'bah* and the Black Stone) and supplicates while crying in humility. Then he comes to the standing place of Ibrahim and he prays two *Rak'ahs* (*Salah*) behind it, reciting *Surah Al-Fatihah* and *Surah Al-Kafirun* in the first *Rak'ah* and *Surah Al-Fatihah* and *Surah As-Samad* (*Al-Ikhlās*) in the second *Rak'ah*. Then after he finishes his prayer he comes to the well of Zamzam and he drinks from it while facing the House (*Ka'bah*) until he is satisfied. He supplicates with whatever supplication he wishes while drinking. It is good if he says:

﴿اللَّهُمَّ إِنِّي أَسْأَلُكَ عِلْمًا نَافِعًا وَرِزْقًا وَاسِعًا وَشِفَاءً مِنْ كُلِّ دَاءٍ﴾

*Allaahumma innee as'aluka 'ilman naafi'an, wa rizqan waasi'an, wa shifa'an min kulli daa'in.*

"O Allāh! Verily, I ask You for beneficial knowledge, vast provisions and cure from every illness."

Then he comes to the Black Stone and kisses it or touches it. Then he goes out to the place of Sa'y, leaving through the gate of As-Safa while reciting the statement of Allāh the Most High:

﴿إِنَّ الصَّفَا وَالْمَرْوَةَ مِنْ شَعَائِرِ اللَّهِ فَمَنْ حَجَّ الْبَيْتَ أَوْ اعْتَمَرَ فَلَا جُنَاحَ عَلَيْهِ أَنْ يَطَّوَّفَ بِهِمَا وَمَنْ تَطَوَّعَ خَيْرًا فَإِنَّ اللَّهَ شَاكِرٌ عَلِيمٌ﴾

«Verily As-Safa and Al-Marwah are from the symbols of Allāh, So it is not a sin on him who performs Hajj or 'Umrah of the House (the Ka'bah at Makkah) to perform the going (Tawaf) between them (As-Safa and Al-Marwah). And whoever does good voluntarily, then verily, Allāh is All-Recognizer, All-Knower.» (2:158)

Until he reaches As-Safa, which he ascends. Then he faces the House (Ka'bah) and says *Allāhu Akbar* (Allāh is the Most Great) three times. Then he says:

«لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ، وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ، لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ، صَدَقَ وَعْدُهُ، وَنَصَرَ عَبْدُهُ، وَهَزَمَ الْأَخْزَابَ وَحْدَهُ»

*La ilaha illal-laahu wah-dahu la shareeka lah. Lahul-mulku wa la hul-hamdu, wa Huwa 'ala kulli shay'in Qadeer. La ilaha illal-laahu wah-dahu, sadaqa wa'dahu, wa nasara 'abdahu, wa hazamal-ahzaba wahdahu.*

"There is none worthy of being worshipped except Allāh alone, Who has no partner. His is the sovereignty and to Him belongs the praise, and He has power over all things. There is none worthy of being worshipped except Allāh alone. He was truthful in His promise, He helped His servant and He defeated the clans (of disbelievers) alone."

Then he supplicates for whatever he wants from the good things of this life and the Hereafter. Then he descends heading for Al-Marwah. So he walks in the area of Sa'y while remembering Allāh and supplicating until he reaches the center of the valley. Now it is designated by the green pole.

When he reaches it, he begins jogging at a swift pace until he reaches the second green pole. Then he returns to walking with tranquility while remembering Allāh, supplicating and sending prayers of blessings upon the Prophet ﷺ.

He continues in this manner until he reaches Al-Marwah, which he ascends. Then he declares Allāh's Greatness (saying *Allāhu Akbar*) and His Oneness (saying *La ilaha illal-lah*) and he supplicates just as he did upon As-Safa. Then he descends and he continues As-Sa'y, walking until he reaches the center of the valley where he begins jogging and running. When he leaves the center of the valley (where the green markers are) he walks until he reaches As-Safa and he ascends it. Then he declares Allāh's Greatness (saying *Allāhu Akbar*) and His Oneness (saying *La ilaha illal-lah*) and he supplicates. Then he descends and heads for Al-Marwah, doing as he did the first time. He continues in this way until he completes seven trips with eight standings; four upon As-Safa and four upon Al-Marwah. Then, if he is someone who is performing 'Umrah, he gets his hair cut and he comes out of his state of Ihram. At this point his 'Umrah is complete. Likewise, if performing *At-Tamattu'* by combining *Al-'Umrah* with *Al-Hajj*, his 'Umrah is complete by his finishing As-Sa'y and shortening his hair. If he is performing *Al-Ifrad* or *Al-Qiran* and he has brought his sacrificial animal (with him to *Hajj*), he is obligated to remain in *Ihram* until he stands at 'Arafat and stones the Pillar of Al-'Aqabah on the Day of *An-Nahr* (Sacrifice). At this point he may remove his *Ihram*.

If this is not the case (i.e. he has not brought a sacrificial animal), he may nullify his intentions for *Hajj* by changing his intentions to the performance of 'Umrah and remove his *Ihram* (after finishing *Sa'y*).<sup>[1]</sup>

[1] This is what the Companions of the Messenger of Allāh ﷺ did during the year of the Farewell *Hajj*, as everyone among them who had not brought a sacrificial animal with him removed his *Ihram* (after 'Umrah) with the permission of the Messenger of Allāh ﷺ.

When the Day of *At-Tarwiyah* comes, on the 8th of Dhul-Hijjah, he assumes *Ihram* (again) with the intention of *Al-Hajj*. He does this in the same manner that he assumed *Ihram* for '*Umrah*. This for someone who is performing *At-Tamattu'* (*Umrah* combined with *Hajj* with a break from *Ihram* between them). However, if the person is performing *Al-Ifrad* or *Al-Qiran*, he should still be in his first *Ihram* (from when he first arrived in Makkah). Then the person leaves (Makkah) while saying *At-Talbiyyah* and he heads for Mina in the morning (*Dhuha*) time so that he can stay there during his entire day and night (of the 8th of Dhul-Hijjah). He should pray (*As-Salah*) there (at Mina) five times. He remains there until the sun rises on the Day of '*Arafat*. Then he sets out from Mina, saying *At-Talbiyyah* and heading for Namirah by taking the way known as *Dhabb*. He remains at Namirah until the sun reaches its zenith (at midday). Then he bathes and comes to the *Masjid* (there at Namirah) where the Messenger ﷺ prayed, and he prays *Salat-uz-Zuhr* and *Salat-ul-Asr* with the Imam, shortening and combining them in the time of the earliest of them (*Az-Zuhr*). When the prayer (*As-Salah*) is complete, he goes to '*Arafat in order to stand at it and he may stand at any part of it. This is due to the statement of the Prophet ﷺ:*

«وَقَفْتُ هَهُنَا وَعَرَفَاتُ كُلُّهَا مَوْقِفٌ»

«I have stopped to stand here and all of '*Arafat is a place of standing.» (Muslim)*

If the person stands at the rocks that are at the bottom of the Mountain of Mercy (Jabal-ur-Rahmah), then that is good, as this was the standing place of the Messenger of Allāh ﷺ. He stands there while riding a mount (i.e. sitting on the animal facing the *Qiblah*) or on his feet or he may sit. He remembers Allāh the Most High, and supplicates to Him until the sun sets and a small portion of the night begins. Then he comes down (from '*Arafat) with tranquility and reciting *At-Talbiyyah* while heading for Muzdalifah, and he takes the route of *Al-Ma'zamin*. He then stops at*



Muzdalifah and before he unloads his travel gear, he prays *Salat-ul-Maghrib*. Then he unloads his travel gear and at that point he prays *Salat-ul-'Isha'*. Afterwards he spends the night there (at Muzdalifah) until the time of *Al-Fajr* comes in, when he prays the morning prayer (*Salat-us-Subh* or *Fajr*). Then he makes his way to *Al-Mash'ar-ul-Haram* (the Sacred Site) in order to stand at it, declaring Allāh's Oneness (saying *La ilaha illal-laah*), His Greatness (saying *Allāhu Akbar*) and supplicating. Also he may stand at any place of Muzdalifah. This is due to the Prophet's statement:

«وَقَفْتُ هَهُنَا وَجَمَعْتُ كُلَّهَا مَوْقِفٌ»

«I stood here and all of Jam' (i.e. Muzdalifah) is a place for standing.» (Muslim)

He continues standing until the morning (sky) becomes yellowish and before sunrise and he picks up seven pebbles in order to throw them at the Pillar of Al-'Aqabah. Then he pushes on to Mina while saying *At-Talbiyyah*. When he reaches Muhassir (a valley), he makes his riding animal move and pick up speed in his traveling for the approximate distance of a stone's throw. When he arrives in Mina, he heads directly for the Pillar of Al-'Aqabah. Then he stones it with seven pebbles, raising his right hand when he throws, saying *Allāhu Akbar* (Allāh is the Most Great). It is also good if he adds:

«اللَّهُمَّ اجْعَلْهُ حَجًّا مَبْرُورًا وَسَعْيًا مَشْكُورًا وَذَنْبًا مَغْفُورًا»

*Allaahum-maj'alhu Hajjan mabrooran wa sa'yan mashkooran wa thanban maghfooran.*

«O Allāh! Make it an accepted and blessed *Hajj*, and an appreciated effort and a forgiven sin.»

Then if he has his sacrificial animal with him, he goes to it and slaughters it or he appoints someone to slaughter it for him if he is not able. He may slaughter the animal in any place that he wishes. This is due to the Prophet's statement:

«نَحَرْتُ هَهُنَا وَمِنَى كُلُّهَا مَنْحَرٌ»

«I sacrificed here and all of Mina is a place for sacrifice.»  
(Muslim)

Then he shaves or shortens his hair, but it is better to shave it. At this point he removes his *Ihram* for the lesser state of releasing (from *Ihram*) and nothing remains forbidden for him except for (sexual intercourse with) women. This is due to the Prophet's statement:

«إِذَا رَمَى أَحَدُكُمْ جُمْرَةَ الْعَقَبَةِ وَحَلَقَ فَقَدْ حَلَّ لَهُ كُلُّ شَيْءٍ إِلَّا النِّسَاءَ»

«When one of you stones the Pillar of Al-'Aqabah and shaves his head, everything becomes permissible for him except women.»<sup>[1]</sup>

The person may now cover his head and wear his normal clothing. He then goes to Makkah if he is able in order to perform *Tawaf-ul-Ifadhah*, which is one of the four pillars of *Al-Hajj*. He enters the *Masjid* in a state of purity and performs *Tawaf* just as he performed *Tawaf-ul-Qudum*, except that he does not expose his right shoulder (*Idhtiba'*) and he does not do *Ar-Ramal*, which is hurrying in the first three circuits. When he finishes the seven circuits, he prays two *Rak'ahs* behind the standing place (of Ibrahim). Then, if he is performing *Al-Ifrah* or *Al-Qiran* and he performed *As-Sa'y* with *Tawaf-ul-Qudum*, his first *Sa'y* (upon arrival) is sufficient (i.e. he does not make *As-Sa'y* again at this point). If he is performing *At-Tamattu'*, he goes out to the area of *As-Sa'y* and makes *As-Sa'y* between *As-Safa* and *Al-Marwah*, completing seven trips just as he did before (upon arrival). When he finishes his *Sa'y*, he releases himself

<sup>[1]</sup> Abu Dawud and there is weakness in its chain of narration. However, the majority of the Companions and Imams acted according to it. Yet, this is restricted to the situation in which the government has not designated a specific area for slaughtering. If the government designates such a place, then the sacrifice should be performed there for the overall benefit in that.

completely from the state of *Ithram* and nothing remains forbidden to him. As he has become free of the *Ithram* state, he may do whatever was forbidden to him due to *Al-Ithram*.

Then on that day he returns to Mina and spends the night there. When the sun passes its zenith (midday) on the first day of the Days of *At-Tashriq*, he goes to the stone pillars and stones the first pillar, which is the one that is next to *Masjid Al-Khayf*. He stones it with seven pebbles, one after another, and he says *Allāhu Akbar* (Allāh is the Most Great) with each each pebble. When he finishes stoning it, he moves to the side a bit and faces the *Qiblah* making supplications with whatever Allāh inspires him to ask for. Then he goes to the middle pillar and he stones it just as he stoned the first one. Afterwards, he moves aside a bit and faces the *Qiblah* while supplicating. Then he goes to the Pillar of Al-'Aqabah, which is the last pillar, and he stones it with seven pebbles, saying *Allāhu Akbar* (Allāh is the Most Great) with each pebble, and he does not supplicate after stoning it. This is because the Prophet ﷺ did not supplicate at this pillar. Then he leaves (the area of the pillars) Then, when the sun declines past its zenith (midday) on the second day, he goes out to stone the three pillars in the same manner that has preceded.<sup>[1]</sup>

Then, if he is in a hurry, he leaves (Mina) to Makkah before sunset on that day (i.e. the 12th of Dhul-Hijjah). If he is not in a hurry (to leave), he spends that night at Mina. Then, when the sun passes its zenith (midday) on the third day (i.e. the 13th of Dhul-Hijjah), he stones the pillars in the same manner that has been mentioned previously. Then

[1] Ibn Majah recorded from Jabir bin 'Abdullah (may Allāh be pleased with him) that he said, "We performed *Hajj* with the Messenger of Allāh ﷺ and we had women and children with us. So we said *At-Talbiyyah* for the children and we threw (pebbles at the pillars) for them." In this narration is an evidence for appointing someone else to throw the pebbles on behalf of the child and anyone who falls under this ruling, such as those who are ill and unable (too weak) to do the stoning.

he travels to Makkah and if he intends to return to travel back to his family (i.e. his homeland), he performs *Tawaf-ul-Wada'* making seven complete circuits. Then, after it he prays two *Rak'ahs* behind the standing place (of Ibrahim) and he leaves, returning to his family (i.e. his homeland). In leaving he says:

«لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ، وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ، آيِبُونَ تَائِبُونَ عَائِدُونَ، لِرَبَّنَا حَامِدُونَ. لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ، صَدَقَ وَعْدُهُ وَنَصَرَ عَبْدَهُ وَهَزَمَ الْأَحْزَابَ وَحْدَهُ»

*La ilaha illal-laahu wahdahu la shareeka lah. Lahul-mulku wa la hul-hamdu wa Huwa 'ala kulli shay'in Qadeer. Ayiboona ta'iboona 'abidoon, li-Rabbina hamidoon. La ilaha illal-laahu wahdahu, sadaqa wa'dahu, wa nasara 'abdahu, wa hazamal-ahzaba wahdahu.*

"There is none worthy of worship except Allāh alone, Who has no partner. His is the sovereignty and His is the praise, and He has power over all things. (We are) returning, repenting, worshipping and praising our Lord. There is nothing worthy of being worshipped except Allāh alone. He was truthful to His promise, He helped His servant and defeated the clans (of disbelievers) alone."

## Visiting the Prophetic Masjid

Visiting the Prophetic Masjid and Giving Greetings of Peace to the Prophet ﷺ in his Noble Grave

### The Virtue of Al-Madinah

Al-Madinah is the sacred city (i.e. *Haram*) of the Messenger of Allāh ﷺ, the abode of his migration (*Hijrah*), the place in which his revelation descended and the Messenger of Allāh ﷺ made it a sacred sanctuary just as Ibrahim made Makkah the Venerable sacred. He (the Prophet ﷺ) said:

«اللَّهُمَّ إِنَّ إِبْرَاهِيمَ حَرَّمَ مَكَّةَ، وَأَنَا أُحَرِّمُ مَا بَيْنَ لَا بَيْتِهَا - حَرَّتَيْهَا -»

«O Allāh! Verily, Ibrahim made Makkah a sanctuary and I am making what is between its (Al-Madinah's) two (Harrah) mountains a sanctuary.» (Muslim)

And he ﷺ said:

«الْمَدِينَةُ حَرَامٌ مَا بَيْنَ عَاوِيٍّ إِلَى ثَوْرٍ، فَمَنْ أَخَذَتْ فِيهَا حَدَثًا، أَوْ آوَى مُحَدِّثًا فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ، لَا يُقْبَلُ مِنْهُ صَرْفٌ وَلَا عَدْلٌ، لَا يُخْتَلَى خَلَاهَا وَلَا يُتَمَرُّ صَيْدُهَا وَلَا تُلْقَطُ لُقَطَتُهَا إِلَّا لِمَنْ أَشَادَ بِهَا، وَلَا يَضْلُجُ لِرَجُلٍ أَنْ يَخْمَلَ فِيهَا السَّلَاحَ لِقِتَالٍ، وَلَا يَضْلُجُ أَنْ يَقْطَعَ مِنْهَا شَجَرَةً إِلَّا أَنْ يَغْلِفَ رَجُلٌ بَعِيرَهُ»

«Al-Madinah is a sanctuary from what is between (Mount) 'A'ir to (Mount) Thawr. So whoever innovates any heresy or sin in it or gives shelter to an innovator (in it), then upon him is the curse of Allāh, His angels and all of mankind. None of his compulsory or optional good deeds of worship will be accepted. Its grass should not be cut, its game animals should not be chased and its dropped items should not be picked up, except by one who will announce them publicly. It is not right

*for a man to carry a weapon in it for fighting and it is not right that a tree should be cut down in it, except for a man who wants to give fodder to his camel.» (Muslim)*

‘Adiy bin Zayd, may Allāh be pleased with him, said:

“The Messenger of Allāh ﷺ made every area of Al-Madinah sacred, from one distance (of its side) to another. Its trees are not to be cut down or uprooted except for what is to be used for driving the camel.” (Abu Dawud and its chain of narration is good.)

And the Messenger of Allāh ﷺ said:

«إِنَّ الْإِيمَانَ لَيَارْزُ إِلَى الْمَدِينَةِ كَمَا تَارِزُ الْحَيَّةُ إِلَى جُحْرِهَا، لَا يَضِرُّ عَلَى لَأَوَائِهَا وَشِدَّتِهَا أَحَدٌ إِلَّا كُنْتُ لَهُ شَفِيعًا أَوْ شَهِيدًا يَوْمَ الْقِيَامَةِ»

«Verily the faith (Al-Iman) will return back to Al-Madinah just as the snake returns back to its hole. No one is patient with its severe distress and hardships, except that I will be his intercessor or witness on the Day of Resurrection.» (Al-Bukhari and Muslim)

And he ﷺ said:

«مَنْ اسْتَطَاعَ مِنْكُمْ أَنْ يَمُوتَ بِالْمَدِينَةِ فَلْيَفْعَلْ، فَإِنِّي أَشْهَدُ لِمَنْ مَاتَ بِهَا»

«Whoever among you is able to die in Al-Madinah, then let him do so. For verily I will bear witness for whoever dies in it.» (At-Tirmithi, Ibn Majah and others)

And he ﷺ said:

«إِنَّمَا الْمَدِينَةُ كَالْكَبِيرِ تَنْفِي خَبَثَهَا، وَتَنْصَعُ طَيِّبَهَا»

«Al-Madinah is like a furnace it expels out its Khabath (impurities, evil and bad persons) and purifies its good (i.e. its good people).» (Muslim)

And he ﷺ said:

«الْمَدِينَةُ خَيْرٌ لَهُمْ لَوْ كَانُوا يَعْلَمُونَ، لَا يَدْعُهَا أَحَدٌ رَغْبَةً عَنْهَا إِلَّا أَبَدَلَ اللَّهُ فِيهَا

مَنْ هُوَ خَيْرٌ مِنْهُ، وَلَا يَثْبُتُ أَحَدٌ عَلَى لَأَوَائِهَا وَجَهْدِهَا إِلَّا كُنْتُ لَهُ شَفِيعًا أَوْ شَهِيدًا يَوْمَ الْقِيَامَةِ»

«Al-Madinah will be better for them if they only knew. No one leaves it due to dislike of it, except that Allāh puts someone else in it in his place who is better than him. And no one is steadfast with its severe hardships and difficulty, except that I will be an intercessor or witness for him on the Day of Resurrection.» (Muslim)

### The Virtue of the People of Al-Madinah

The people of Al-Madinah are the neighbors of the Messenger of Allāh ﷺ and the builders and maintainers of his Masjid. They are the residents of his land, the protectors in his sanctuary and the guardians of his sacred land. When they are upright and righteous, they are the most elevated of people in rank and the noblest in status. It is obligatory to respect them and hold them in high esteem. It is mandatory to love them and befriend them. The Messenger of Allāh ﷺ warned against harming them. He ﷺ said:

«لَا يَكِيدُ أَهْلَ الْمَدِينَةِ أَحَدٌ إِلَّا اِنْمَاعَ كَمَا يَنْمَاعُ الْمِلْحُ فِي الْمَاءِ»

«No one plots against the people of Al-Madinah except that he will be dissolved (i.e. destroyed) just like salt is dissolved in water.» (Al-Bukhari)

«لَا يُرِيدُ أَحَدٌ أَهْلَ الْمَدِينَةِ بِسُوءٍ إِلَّا أَذَابَهُ اللَّهُ فِي النَّارِ ذَوْبَ الرِّصَاصِ، أَوْ ذَوْبَ الْمِلْحِ فِي الْمَاءِ»

«No one intends to do any evil against the people of Al-Madinah except that Allāh will make him melt in the Fire, like lead, or like salt dissolves in water.» (Muslim)

The Prophet ﷺ supplicated for blessings for them in their provisions due to love for them and respect for them. He ﷺ said:

«اللَّهُمَّ بَارِكْ فِي مِكْيَالِهِمْ، وَبَارِكْ لَهُمْ فِي صَاعِهِمْ وَمُدِّهِمْ»

«O Allāh! Bless them in their measurements (of produce) and bless them in their Sa' and their Mudd.» (Al-Bukhari)

He ﷺ advised his nation of followers in general to be good to them. He ﷺ said:

«الْمَدِينَةُ مُهَاجِرِي، فِيهَا مَضْجَعِي، وَمِنْهَا مَبْعَثِي، حَقِيقٌ عَلَى أُمَّتِي حِفْظُ جِيرَانِي مَا لَمْ يَرْتَكِبُوا الْكَبَائِرَ، وَمَنْ حَفِظَهُمْ كُنْتُ لَهُ شَفِيعًا وَشَهِيدًا يَوْمَ الْقِيَامَةِ»

«Al-Madinah is my place of migration. In it is my bed and from it I send out (war parties). It is a right upon my nation of followers (Ummah) to protect my neighbors (i.e. the people of Al-Madinah) as long as they do not indulge in the major sins. And whoever protects them, I will be an interceder or witness for him on the Day of Resurrection.» (At-Tabarani in Al-Kabir and in its chain of narration is an abandoned narrator.)

## The Virtue of the Noble Prophetic Masjid

Al-Masjid An-Nabawiyy (The Prophetic Masjid) is one of the three Masjids which the Noble Qur'an makes mention of, when Allāh the Most High said:

﴿سُبْحَنَ الَّذِي أَسْرَى بِعَبْدِهِ لَيْلًا مِنَ الْمَسْجِدِ الْحَرَامِ إِلَى الْمَسْجِدِ الْأَقْصَا الَّذِي بَرَكْنَا حَوْلَهُ﴾

«Glorified (above any imperfections) is He Who took His servant on a night journey from Al-Masjid Al-Haram to Al-Masjid Al-Aqsa, the neighborhood whereof We have blessed.»

(17:1)

For verily in the word Al-Aqsa is a clear allusion to the Prophetic Masjid, as Al-Aqsa is a superlative adjective for Al-Qasee (that which is far or distant). Thus, whoever is at Makkah the Venerable, the Masjid that is distant from him is the Prophetic Masjid. And Al-Masjid Al-Aqsa means Bayt



*Al-Maqdis* (Jerusalem). Thus, He (Allāh) mentioned the Prophetic *Masjid* in an implied wording that includes both *Masjids* (i.e. the one in Al-Madinah and Jerusalem), as it (the *Masjid* in Al-Madinah) did not exist in the days that this noble verse was revealed. Rather, it came into existence (i.e. was built) later.

The Prophet ﷺ said:

«صَلَاةٌ فِي مَسْجِدِي هَذَا أَفْضَلُ مِنْ أَلْفِ صَلَاةٍ فِيْمَا سِوَاهُ إِلَّا الْمَسْجِدَ الْحَرَامَ،  
وَصَلَاةٌ فِي الْمَسْجِدِ الْحَرَامِ أَفْضَلُ مِنْ مِائَةِ أَلْفِ صَلَاةٍ فِيْمَا سِوَاهُ»

«A prayer (*Salah*) in this *Masjid* of mine is better than one thousand prayers in any other place, except for the Sacred *Masjid* (in Makkah). And a prayer in the Sacred *Masjid* is better than one hundred thousand prayers in any other place.»<sup>[1]</sup>

The Prophet ﷺ made it the second of the three *Masjids*, saying that an intense journey for worship is not permitted to other than them. He ﷺ said:

«لَا تُشَدُّ الرِّحَالُ إِلَّا إِلَى ثَلَاثَةِ مَسَاجِدَ: الْمَسْجِدِ الْحَرَامِ وَمَسْجِدِي هَذَا  
وَالْمَسْجِدِ الْأَقْصَى»

«An intense journey (for worship) is not taken except to three *Masjids*: The Sacred *Masjid* (of Makkah), my *Masjid* (in Al-Madinah) and Al-*Masjid* Al-Aqsa (in Jerusalem).»

He specified this *Masjid* (in Al-Madinah) with features that the other *Masjids* do not have. It has a noble garden, about which the Messenger of Allāh ﷺ said:

«مَا بَيْنَ بَيْتِي وَمِنْبَرِي رَوْضَةٌ مِنْ رِيَاضِ الْجَنَّةِ»

«That which is between my house and my *Minbar* (pulpit) is a

[1] Muslim recorded it up to his statement "except for the Sacred *Masjid*." The last sentence was recorded by Ahmad, Ibn Majah and Ibn Hibban in his *Sahih*.

*garden from the gardens of Paradise.»* (Al-Bukhari and Muslim)

It was reported from him ﷺ that he said:

«مَنْ صَلَّى فِي مَسْجِدِي هَذَا أَرْبَعِينَ صَلَاةً لَا تَقُوتُهُ صَلَاةٌ، كُتِبَ لَهُ بَرَاءَةٌ مِنَ النَّارِ، وَبَرَاءَةٌ مِنَ الْعَذَابِ، وَبَرَاءَةٌ مِنَ النِّفَاقِ»

*«Whoever prays forty prayers in this Masjid of mine without missing a prayer, he will have written for him an immunity from the (Hell) Fire, immunity from the torment and immunity from hypocrisy.»*<sup>[1]</sup>

Therefore, visiting this *Masjid* for prayer is one of the means of drawing near (to Allāh) that is a means for the Muslim to his Lord in fulfilling his needs and gaining success by His pleasure.

### **Visiting the Prophetic Masjid and sending Greetings of Peace upon the Messenger ﷺ and his Companions**

Since visiting the Prophetic *Masjid* is an act of worship, it also needs a specific intention just as the other acts of worship, as actions are (rewarded) based upon intentions. So the Muslim makes the intentions to visit the Prophetic *Masjid* in order to perform prayer (*As-Salah*) in it as a means of drawing nearer to Allāh the Most High, and coming closer to Him with obedience and love. Thus, when one reaches the *Masjid* in a state of purity, he enters with his right foot first, just as is the Sunnah for entering all *Masjids*. He says:

«بِسْمِ اللَّهِ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى رَسُولِ اللَّهِ، اللَّهُمَّ اغْفِرْ لِي ذُنُوبِي وَافْتَحْ لِي أَبْوَابَ رَحْمَتِكَ»

*Bismillaahi, was-salaatu was-salaamu 'ala rasoolil-*

<sup>[1]</sup> Ahmad and Al-Munthiri said that its narrators are narrators of the *Sahih*. At-Tabarani and At-Tirmithi both reported it with a different wording.

*laahi. Allaahummagh-fir lee dhunoobee waf-tah lee abwaaba rahmatika.*

“With the Name of Allāh, and may prayers of blessings and peace be upon the Messenger of Allāh. O Allāh! Forgive for me my sins and open for me the doors of Your Mercy.”

Then he comes to the Noble Garden area (*Ar-Rawdhat ush-Sharifah*) if he finds an open space there, he prays, and if not, he comes in from any side of the *Masjid* and prays two *Rak'ahs* of prayer or however much Allāh inspires him to pray. Then he heads towards the Noble Room (*Al-Hujarat ush-Sharifah*) and gives the greetings of peace to the Prophet ﷺ. He stands facing the direction of the Noble Room (where the Prophet ﷺ is buried) and he sends the greeting of peace upon the Messenger ﷺ by saying:

«السَّلَامُ عَلَيْكَ يَا رَسُولَ اللَّهِ، السَّلَامُ عَلَيْكَ يَا نَبِيَّ اللَّهِ، السَّلَامُ عَلَيْكَ يَا خَيْرَ خَلْقِ اللَّهِ، السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ. أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَأَشْهَدُ أَنَّكَ عَبْدُ اللَّهِ وَرَسُولُهُ، قَدْ بَلَغْتَ الرِّسَالَةَ، وَأَدَّيْتَ الْأَمَانَةَ، وَنَصَحْتَ الْأُمَّةَ، وَجَاهَدْتَ فِي اللَّهِ حَقَّ جِهَادِهِ، صَلَّى اللَّهُ عَلَيْكَ وَعَلَى آلِكَ وَأَزْوَاجِكَ وَدُرِّيَّاتِكَ، وَسَلَّمَتْ تَسْلِيمًا كَثِيرًا»

*“As-Salaamu ‘alaika yaa rasoolal-laah, as-salaamu ‘alaika ya nabiyyal-laah, as-salaamu ‘alaika ya kheerata khalqil-laah, as-salaamu ‘alaika ayyuhan-nabiyyu wa rahmatul-laahi wa barakatuh. Ash-hadu an la ilaha illal-laah, wa ash-hadu annaka ‘abdul-laahi wa rasooluh. Qad ballagh-tar-risaalah, wa addaytal-amaanah, wa nasah-tal-ummah, wa jaahad-ta fil-lahi haqqa jihaadihi. Sallal-lahu ‘alaika wa ‘ala aalika wa azwaajika wa dhuriyyaatika, wa sallama tasleeman katheeran.”*

“Peace be upon you O Messenger of Allāh, peace be upon you O Prophet of Allāh, peace be upon you O best of the creation of Allāh, peace be upon you O Prophet, and the mercy of Allāh and His blessings. I bear witness that none

has the right to be worshipped except Allāh and I bear witness that you are the servant of Allāh and His Messenger. You conveyed the Message, fulfilled the trust, advised the Muslim nation, and you made *Jihad* in the cause of Allāh in the true way that *Jihad* should be made. May Allāh send prayers of blessings and an abundance of peace upon you, your family, your wives and your progeny.”

Then he moves a little to the right and he sends greetings of peace to Abu Bakr As-Siddiq by saying:

«السَّلَامُ عَلَيْكَ يَا أَبَا بَكْرٍ الصَّدِيقِ صَفِيِّ رَسُولِ اللَّهِ، وَصَاحِبِهِ فِي الْغَارِ، جَزَاكَ اللَّهُ عَنْ أُمَّةٍ رَسُولِ اللَّهِ ﷺ خَيْرًا»

*As-Salaamu ‘alaika yaa Aba Bakris-Siddeeq, safiyya rasoolil-laah, wa sahibahu fil-ghar. Jazaakallaahu ‘an ummati rasoolil-laahi ﷺ khayran.*

“Peace be upon you Abu Bakr As-Siddeeq, the best friend of the Messenger of Allāh and his companion in the cave. May Allāh reward you with good on behalf of the *Ummah* of the Messenger of Allāh ﷺ.”

Then he moves a little to the right and sends greetings of peace to ‘Umar, may Allāh be pleased with him, by saying:

«السَّلَامُ عَلَيْكَ يَا عَمَرُ الْفَارُوقُ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ، جَزَاكَ اللَّهُ عَنْ أُمَّةٍ مُحَمَّدٍ ﷺ خَيْرًا»

*As-Salaamu ‘alaika yaa ‘Umarul-Farooqu wa rahmatul-laahi wa barakatuh. Jazaakallaahu ‘an ummati Muhammadin ﷺ khayran.*

“Peace be upon you, O ‘Umar Al-Faruq, and the mercy of Allāh and His blessings. May Allāh reward you with good on behalf of the *Ummah* of Muhammad ﷺ.”

Then he goes away (from this area). If he wants to perform *At-Tawassul* (seek a means of intercession) to Allāh by this visit, he should distance himself slightly from the front of the Noble Room (where the Prophet ﷺ is buried), face the

*Qiblah*, and pray to Allāh for whatever he wishes and ask Him for whatever he wants from His bounty.

In this manner the Muslim's visit of the Noble Prophetic *Masjid* is complete. If one wishes, he may travel (leave) and if he wishes, he may stay (longer). However, it is better to stay in Al-Madinah in order to pray (*As-Salah*) in the *Masjid* of the Messenger ﷺ, especially since it is encouraged to pray forty prayers in the Noble Prophetic *Masjid*.

### Visiting the Virtuous Places of Al-Madinah Al-Munawwarah

The Muslim has been blessed if Allāh honors him with visiting the Prophetic *Masjid* and standing at the grave of the Prophet ﷺ. Allāh has honored him by allowing him to enter *Tayyibah* (the good city), may Allāh make its soil good. The Muslim should also go to *Masjid Quba'* in order to pray in it, as the Prophet ﷺ used to visit it and pray in it. Likewise, his Companions used to do the same after him. He ﷺ said:

«مَنْ تَطَهَّرَ فِي بَيْتِهِ وَأَحْسَنَ الطُّهُورَ ثُمَّ أَتَى مَسْجِدَ قُبَاءٍ لَا يُرِيدُ إِلَّا الصَّلَاةَ فِيهِ،  
كَانَ لَهُ كَأَجْرِ عُمْرَةٍ»

*«Whoever purifies himself in his house, and perfects his purification (i.e. Wudhu'), then he comes to Masjid Quba' only intending to pray in it, it will be like the reward of (the performance of) an 'Umrah for him.»* (Ahmad, An-Nasa'i, Ibn Majah and Al-Hakim, who said its chain of narration is *Sahih*.)

The Prophet ﷺ used to come to *Masjid Quba'* riding and walking, and he would pray two *Rak'ahs* in it. (Muslim)

Likewise, he should visit the graves of the martyrs at Uhud, as the Prophet ﷺ would go out to visit them in their graves and he would send greetings of peace upon them. (Abu Dawud)

By visiting of the martyrs of Uhud, one may also see the

mountain of Uhud, the mountain about which the Messenger ﷺ said:

«أُحُدٌ جَبَلٌ يُحِبُّنَا وَنُحِبُّهُ»

«Uhud is a mountain that loves us and we love it.» (Al-Bukhari and Muslim)

He ﷺ also said about it:

«أُحُدٌ جَبَلٌ مِنْ جِبَالِ الْجَنَّةِ»

«Uhud is a mountain from the mountains of Paradise.»<sup>[1]</sup>

Once Uhud shook (with a quake) under the Prophet's feet while he was with Abu Bakr, Umar and Uthman. So the Prophet ﷺ said to it:

«اسْكُنْ أُحُدٌ - وَضْرَبُهُ بِرِجْلِهِ - فَمَا عَلَيْكَ إِلَّا نَبِيٌّ وَصِدِّيقٌ وَشَهِيدَانِ»

«Be still Uhud and he struck it with his foot - for there is nothing on you other than a Prophet, a truthful man (Siddiq) and two martyrs.» (Al-Bukhari)

One may also visit the graveyard of Al-Baqi', as the Prophet ﷺ used to visit its people and send greetings of peace upon them, as is narrated in the *Sahih*. This is because it (Al-Baqi') contains thousands of the Companions, the successors (followers of the Companions) and others of the righteous servants of Allāh. Thus, when one arrives, he gives greetings of peace to its occupants, saying:

«السَّلَامُ عَلَيْكُمْ أَهْلَ الدِّيَارِ مِنَ الْمُؤْمِنِينَ وَالْمُسْلِمِينَ، أَنْتُمْ سَابِقُونَ، وَإِنَّا إِِنْ شَاءَ اللَّهُ بِكُمْ لَا جِفُونَ، يُرَحِّمُ اللَّهُ الْمُسْتَفْدِينَ مِنَّا وَمِنْكُمْ وَالْمُسْتَأْجِرِينَ، نَسْأَلُ اللَّهَ لَنَا وَلَكُمْ الْعَاقِبَةَ فِي الدُّنْيَا وَالْآخِرَةِ، اللَّهُمَّ اغْفِرْ لَنَا وَلَهُمْ، وَارْحَمْنَا

[1] At-Tabarani recorded it with the wording:

«أُحُدٌ رُكْنٌ مِنْ أَرْكَانِ الْجَنَّةِ»

«Uhud is a pillar from the pillars of Paradise.» It is an extremely weak *Hadith*.

وَاِيَّاهُمْ، اَللّٰهُمَّ لَا تَحْرِمْناْ اَجْرَهُمْ، وَلَا تُفَتِّنَّا بَعْدَهُمْ»

*As-Salaamu 'alaikum ahlad-diyari minal-mu'mineena wal-muslimeen. Antum saabiqoon, wa inna in sha' Allāhu bikum lahiqoon. Yarhamul-lahul-mustaqdimeena minna wa minkum wal-musta'khireen. Nas'alul-laaha lana wa lakumul-'aafiyata fid-dunya wal-aakhirah. Allaahummagh-fir lana wa lahum, war-hamna wa iyyahum. Allaahumma la tahrimna ajrahum wa la taftinna ba'dahum.*

“Peace be upon you O people of the abodes, from the believers and the Muslims. All of you have gone and if Allāh wills we will join you. May Allāh have mercy upon those who went before us and you and those who came later. We ask Allāh for safety for both you and us in this life and the Hereafter. O Allāh! Forgive them and us and have mercy upon them and us. O Allāh! Do not prevent us from their reward and not put us to trial after them.”

## Udhhiyyah and 'Aqiqah

### Al-Udhhiyyah

#### Definition

*Al-Udhhiyyah* is a sheep that is slaughtered on the Day of 'Eid (*Al-Adhha*) in order to seek nearness to Allāh the Most High.

#### Ruling

*Al-Udhhiyyah* is an obligatory Sunnah upon every Muslim household that is able to afford it. This is due to Allāh the Almighty's statement:

﴿فَصَلِّ لِرَبِّكَ وَأَنْحَرْ﴾

«Therefore turn in prayer to your Lord and sacrifice (to Him only).» (108:2)

Allāh's Messenger ﷺ said:

«مَنْ كَانَ ذَبَحَ قَبْلَ الصَّلَاةِ فَلْيُعِدْ»

«Anyone who offered the sacrifice before the 'Eid prayer, let him repeat (it after the 'Eid prayer).» (Al-Bukhari and Muslim)

Abu Ayyub Al-Ansari said, "A man used to offer a sheep as a sacrifice during the lifetime of Allāh's Messenger ﷺ. He used to sacrifice the sheep on behalf of himself and his household." (At-Tirmithi and he said it is *Sahih*)

#### Its Virtues

A proof of the tremendous virtue in the Sunnah of the *Udhhiyyah* is the Messenger's statement:

«مَا عَمِلَ ابْنُ آدَمَ يَوْمَ النَّحْرِ عَمَلًا أَحَبَّ إِلَى اللَّهِ مِنْ إِرَاقَةِ دَمٍ، وَإِنَّهَا لَتَأْتِي يَوْمَ



الْقِيَامَةِ يُقْرُونَهَا وَأَظْلَافِهَا وَأَشْعَارِهَا، وَإِنَّ الدَّمَ لَيَقَعُ مِنَ اللَّهِ عَزَّ وَجَلَّ بِمَكَانٍ  
قَبْلَ أَنْ يَقَعَ عَلَى الْأَرْضِ فَطَيَّبُوا بِهَا نَفْسًا»

«The son of Adam does not perform any deed on the Day of Sacrifice (i.e. 10th of Dhul-Hijjah) more beloved to Allāh than shedding the blood (of sacrifice). For verily it will come on the Day of Judgment along with its horns, cloven hooves, and hairs. And verily the (sacrificing) blood is accepted by Allāh at its location prior to its falling on the ground. Therefore, treat it (the animal) in a good and gentle way.» (Ibn Majah and At-Tirmithi, who said it is *Hasan Gharib*)

It was said to the Prophet ﷺ, "What are these sacrifices?" He ﷺ said:

«سُنَّةُ أَبِيكُمْ إِبْرَاهِيمَ»

«A *Sunnah* (i.e. a tradition or way of life) of your father, Ibrahim.»

They asked: "What do we get from it?" He ﷺ said:

«بِكُلِّ شَعْرَةٍ حَسَنَةٍ»

«Every hair of it has a good reward.»

They asked, "What about its wool?" He ﷺ said:

«بِكُلِّ شَعْرَةٍ مِنَ الصُّوفِ حَسَنَةٍ»

«Every hair of its wool has a good reward.» (Ibn Majah and At-Tirmithi, and it is *Hasan*)

### **The Wisdom of Udhhiyyah**

From the wisdom behind the *Udhhiyyah* are the following:

1. Attaining nearness to Allāh by it, as Allāh says:

﴿فَصَلِّ لِرَبِّكَ وَأَنْحَرْ﴾

«Therefore, turn in prayer to your Lord and sacrifice (to Him only).» (108:2)

Allāh says:

﴿قُلْ إِنَّ صَلَاتِي وَنُسُكِي وَمَحْيَايَ وَمَمَاتِي لِلَّهِ رَبِّ الْعَالَمِينَ ﴿١٦٢﴾ لَا شَرِيكَ لَهُ﴾

﴿Say: 'Verily, my prayer, my sacrifice, my living, and my dying are for Allāh, the Lord of all that exists. He has no partners.'﴾ (6:162-163)

The term *Nusuk* in this verse refers to slaughtering in order to attain nearness to Allāh the Most High.

2. Revival of the Sunnah of the Imam of the people of monotheism, Prophet Ibrahim, the intimate friend of Allāh. Allāh sent inspiration to Ibrahim to sacrifice his son Isma'il. Later, Allāh ransomed him with a ram which he slaughtered instead of Ismail. Allāh says:

﴿وَقَدَرْتُهُ بِذَنْبِ عِزِّهِ﴾

﴿And We ransomed him with great sacrifice.﴾ (37:107)

3. Showing generosity to the dependents on the day of 'Eid and spreading mercy among the poor and needy people.

4. Expressing gratitude to Allāh for His subjecting the livestock animals to us.

Allāh says:

﴿تَكُلُوا مِنْهَا وَأَطْعِمُوا الْقَانِعَ وَالْمُعْتَرَّ كَذَلِكَ سَخَّرْنَاهَا لَكُمْ لَعَلَّكُمْ تَشْكُرُونَ ﴿٣٦﴾ لَنْ يَنَالَ اللَّهَ لُحُومُهَا وَلَا دِمَاؤُهَا وَلَكِنْ يَنَالُهُ التَّقْوَىٰ مِنْكُمْ﴾

﴿Then, eat thereof, and feed the poor who does not ask (others), and the beggar who asks (others). Thus, We have made them subject to you that you may be grateful. It is neither their meat nor their blood that reaches Allāh, but it is Taqwa (i.e. piety and righteousness) from you that reaches Him.﴾ (22:36-37)

### Its Regulations

1. Its Age: It is not sufficient for a sacrificial animal that is a sheep to be less than *Al-Jutha'*, which is one that has

completed a year in age or is close to it. As for other than sheep, such as goats, camels, and cows, it is not sufficient for a goat to be less than *Ath-Thaniyy*. In goats, *Ath-Thaniyy* are those that have completed one year and entered the second. As for the camels, it should have completed four years and entered into the fifth year. Regarding the cows, it should have completed two years and entered into the third. This is due to the Prophet's saying:

«لَا تَذْبَحُوا إِلَّا مُسِنَّةً، إِلَّا أَنْ يَغُسَّرَ عَلَيْكُمْ فَتَذْبَحُوا جَذَعَةً مِنَ الضَّأْنِ» (وَالْمُسِنَّةُ مِنَ الْأَنْعَامِ هِيَ الشَّيْئَةُ)

«Only slaughter the full grown animal, unless it is difficult for you. So you may slaughter a *Jutha'ah* from the sheep (and the full grown animal that is *Ath-Thaniyyah*).» (Muslim)

2. Physical Fitness: It is not sufficient to sacrifice an animal unless it is free from any natural physical defects. Thus, it is not sufficient to sacrifice the one-eyed animal, the lame animal, the animal whose ear is either cut or lacerated, the one having a broken horn, the sick animal and the old animal that has no marrow. This is due to the Prophet's statement:

«أَرْبَعٌ لَا تَجُوزُ فِي الْأَصَاغِي: الْعُورَاءُ الْبَيِّنُ عَوْرَتَهَا، وَالْمَرِيضَةُ الْبَيِّنُ مَرَضُهَا، وَالْعَرْجَاءُ الْبَيِّنُ ظَلْعُهَا، وَالْكَسِيرَةُ الَّتِي لَا تُنْقِي» (بُعْنِي لَا تُقَي فِيهَا، أَيْ لَا مَخَّ فِي عِظَامِهَا وَهِيَ الْهَازِلُ الْمَجْفَاءُ)

«There are four types of animals that are not permissible for sacrifice. (They are :) A one-eyed animal, which obviously lost one eye (or sight in it), a sick animal with an obvious illness, a lame animal with an obvious limp, and an old animal which has no marrow and is extremely lean and skinny.» (Muslim)

3. The Best Type of Sacrificial Animal: The best type of sacrificial animal is a white ram with two horns, and black around the eyes and legs. This is the description that the Messenger Allāh ﷺ preferred and he sacrificed such animal

himself. 'Aishah said, "Verily the Prophet ﷺ sacrificed a ram with horns, a black belly, black legs and black around the eyes." (At-Tirmithi, who said it is *Sahih*)

4. The Time of Slaughtering: The time to sacrifice the animal is during the morning of the 'Eid Day, after the 'Eid prayer meaning *Salat-ul-'Eid*. Therefore, it is never acceptable to offer the sacrifice before the 'Eid prayer. This is due to the Prophet's statement:

«مَنْ ذَبَحَ قَبْلَ الصَّلَاةِ فَإِنَّمَا يَذْبَحُ لِنَفْسِهِ، وَمَنْ ذَبَحَ بَعْدَ الصَّلَاةِ فَقَدْ تَمَّ نُسُكُهُ وَأَصَابَ سُنَّةَ الْمُسْلِمِينَ»

*«Whoever slaughtered (the sacrifice) before the ('Eid) prayer, he only slaughtered it for himself, and whoever slaughtered it after the ('Eid) prayer, certainly he perfected his sacrifice (at the prescribed time) and followed the Sunnah (legal way) of the Muslims.»* (Al-Bukhari)

Concerning delaying the sacrifice after the Day of 'Eid, it is permissible until the second and third day after the 'Eid. This is due to what has been reported:

«كُلُّ أَيَّامِ التَّشْرِيقِ ذَبْحٌ»

*«All days of At-Tashriq<sup>[1]</sup> are valid for sacrifice.»<sup>[2]</sup>*

5. What is Recommended when Slaughtering It: It is recommended to face the animal towards the *Qiblah* and say:

«إِنِّي وَجَّهْتُ وَجْهِيَ لِلَّذِي فَطَرَ السَّمَوَاتِ وَالْأَرْضَ حَنِيفًا، وَمَا أَنَا مِنَ الْمُشْرِكِينَ، إِنَّ صَلَاتِي وَنُسُكِي وَمَحْيَايَ وَمَمَاتِي لِلَّهِ رَبِّ الْعَالَمِينَ لَا شَرِيكَ لَهُ»

[1] Meaning the 10th, 11th, 12th and 13th of Dhul-Hijjah.

[2] Imam Ahmad, and there is some criticism of its chain of narration. However, there is a statement reported from 'Ali, Ibn 'Abbas and others that support it. Malik and Abu Hanifah both said that it is reported from 'Umar and his son, may Allah be pleased with them, that they said, "Do not delay the sacrifice past the third day of the 'Eid."

وَبِذَلِكَ أُمِرْتُ وَأَنَا أَوَّلُ الْمُسْلِمِينَ

*Innee wajjahtu wajhiya lilladhee fataras-samaawaati  
wal-ardha haneefan, wa maa anaa minal-mushrikeen.  
Inna salaatee wa nusukee wa mahyaaya wa  
mamaatee lillaahi Rabbil-'aalameen, laa shareeka lahu  
wa bidhalika umirtu wa anaa awlul-muslimeen.*

“Verily, I have turned my face towards Him, Who has created the heavens and the earth, upright, and I am not of polytheists. Verily, my prayer, my sacrifice, my living, and my dying are for Allāh, the Lord of all that exists. He has no partner. And with this I have been commanded, and I am the first of the Muslims.”

When one begins the sacrifice he should say:

بِسْمِ اللَّهِ وَاللَّهُ أَكْبَرُ، اللَّهُمَّ هَذَا مِنْكَ-وَلَكَ

*Bismillaahi waallaahu Akbar, Allaahumma hadhaa  
minka wa laka.*

“In the Name of Allāh,<sup>[1]</sup> and Allāh is the Most Great. O Allāh this is from You and for You.”

6. The Legitimacy of Entrusting Someone else to Perform It: It is recommended for the Muslim to slaughter the sacrificial animal himself. However, it is permissible for him to authorize someone else to perform the slaughter on his behalf, as there is no harm in this and there is no difference among the people of knowledge about this.

7. The Recommended Division of its Meat: Dividing the sacrificial meat into three portions is recommended. One-

[1] Mentioning the Name of Allāh when slaughtering is obligatory according to the Noble Qur'an. Allāh the Most High says:

﴿وَلَا تَأْكُلُوا مِمَّا لَمْ يُذَكِّرْ أَسْمُ اللَّهِ عَلَيْهِ﴾

﴿And do not eat of that for which Allah's Name has not been pronounced.﴾ (6:121)

third of it may be eaten by the family, another third is to be distributed as charity and the remaining third may given as gift to their friends. This is due to the Prophet's statement:

«كُلُوا وَادَّخِرُوا وَتَصَدَّقُوا»

«Eat (of it), store (some of it) and distribute (some of it) as charity.» (Al-Bukhari and Muslim)

It is also permissible to distribute all of it in charity, just as there is no harm in not giving any of it as a gift.

8. The Wages of the Butcher should be from Other than It: It is not permissible to give anything from the sacrificial meat as wages to the butcher for his work. 'Ali said:

“Allāh's Messenger ﷺ commanded me to supervise the slaughtering of his sacrificial camels, and distribute its meat, skin, and saddle clothes in charity. (He also commanded me) that I should not give anything from it to the butcher, and he said, 'We will give him (his labor charge) from ourselves (i.e. our own money).’” (Al-Bukhari and Muslim)

9. It is enough to slaughter one sheep for all members of the family, even if the household consists of a large number of people. This is due to the statement of Abu Ayyub, may Allāh be pleased with him:

“A man used to slaughter a sheep during the lifetime of the Messenger of Allāh ﷺ for himself and his family members as well.” (See earlier)

10. What should a Person avoid after intending to Sacrifice? It is extremely disliked for one intending to sacrifice to remove any of his hair or his nails. This restriction is effective from the appearance of the crescent on the first day of Dhul-Hijjah, until he sacrifices his animal. This is due to the Prophet's statement:

«إِذَا رَأَيْتُمْ هِلَالَ ذِي الْحِجَّةِ وَأَرَادَ أَحَدُكُمْ أَنْ يَصْحِيَ فَلْيُمْسِكْ عَنْ شَعْرِهِ»

وَأَطْفَارِهِ حَتَّى يُضْحِيَ»

*«If you see the crescent of the month of Dhul-Hijjah and one of you intends to sacrifice an animal, he should refrain from removing his hairs and nails until he sacrifices the animal.»*  
(Muslim)

11. Allāh's Messenger ﷺ slaughtered the Sacrifice on behalf of the entire *Ummah*: If anyone among the Muslims is unable to afford the slaughtering animal, he still attains the reward of those who perform the sacrifice. This is because the Prophet ﷺ said, while he was slaughtering one of two rams:

«اللَّهُمَّ هَذَا عَنِّي وَعَمَّنْ لَمْ يُضَحْ مِنْ أُمَّتِي»

*«O Allāh! This (sacrifice) is from me and on behalf of all those who did not slaughter the sacrifice from my Ummah.»* (Ahmad, Abu Dawud and At-Tirmithi)

## Al-'Aqiqah

### Its Definition

The 'Aqiqah is a sheep slaughtered on the seventh day of a new infant's birth.

### Its Ruling

The 'Aqiqah is a strongly recommended (Sunnah) act for the parents who are able to perform it. This is due to the Prophet's statement:

«كُلُّ غُلَامٍ رَهِيْنَةٌ بِعَقِيْقَتِهِ، تُذْبَحُ عَنْهُ يَوْمَ سَابِعِهِ، وَيُسَمَّى وَيُحْلَقُ رَأْسُهُ»

*«Every boy (infant) is a pledge against his 'Aqiqah, to be slaughtered on the seventh day, he is given a name and his head is to be shaved.»* (Abu Dawud and An-Nasa'i, and it has been graded *Sahih* by a number of scholars.)

### The Wisdom of 'Aqiqah

From the wisdom behind the 'Aqiqah is expressing gratitude to Allāh for the blessing of the child. It is also a means of devotion to Allāh in order to protect and care for the child.

### Its Regulations

From the regulations of the 'Aqiqah are the following:

1. Its Physical Fitness and Age Limit: Whatever requirements applied to the sacrifice, such as age, physical fitness, and absence of any defects, the same are applicable to the slaughtering for the newborn baby as well. Whatever is not sufficient for the sacrifice (*Al-Udhhiyyah*), then it is not sufficient for the 'Aqiqah.

2. Eating and Distribution of It: It is recommended to distribute it as the meat is distributed from the sacrificial animal. So the family may eat from it, give some of it in charity and give some of it away as gifts.

3. Recommended Acts on the Day of the 'Aqiqah: It is recommended that if the newborn is a boy then one should slaughter two sheep, as the Messenger ﷺ slaughtered two rams on behalf of Al-Hasan. (At-Tirmithi, who said it is *Sahih*)

Likewise it is recommended to name the newborn on the seventh day of its birth. Selecting one of the best names (for the child) is also recommended. His head should be shaved and the equivalent of his shaved hair's weight in gold or silver is to be given in charity. This can be in gold, silver or any other currency that takes the place of it. This is due to the Prophet's statement:

«كُلُّ غُلَامٍ رَهِيْنَةٌ بِعَقِيْقَتِهِ تُذْبِحُ عَنْهُ يَوْمَ سَابِعِهِ، وَيُسَمَّى وَيُحْلَقُ رَأْسُهُ»

*«Every boy (infant) is a pledge against his 'Aqiqah, which is to be slaughtered on the seventh day of his birth, he is given a name and his head is to be shaved.»<sup>[1]</sup>*

[1] It is recommended to shave the head of the male infant and not the female infant. It is disliked to shave the female infant's head.



4. Calling the *Adhan* and the *Iqamah* in the Two Ears of the Newborn Child: The people of knowledge consider it recommended that when the child is born, the *Adhan* should be called in its right ear and the *Iqamah* called in its left ear. This is in hopes that Allāh will protect the baby from Umm As-Sibyan, which is the female demon (who follows women) of the *Jinn*. This is due to the report which states:

«مَنْ وُلِدَ لَهُ مَوْلُودٌ فَأَذَّنَ فِي أُذُنِهِ الْيُمْنَى، وَأَقَامَ فِي أُذُنِهِ الْيُسْرَى لَمْ تَضُرَّهُ أُمُّ الصَّبْيَانِ»

*«Whoever has a newborn infant, let him call the Adhan in his right ear and the Iqamah in his left ear so that Umm As-Sibyan will not harm the baby.»<sup>[1]</sup>*

5. If the Seventh Day is missed without Slaughtering the Sheep: It is valid to slaughter it on the fourteenth day or twenty-first day after the birth. If the baby died before the seventh day of birth, there is no need to slaughter the sacrifice for its *'Aqiqah*.

<sup>[1]</sup> Ibn As-Sunni recorded it as a statement of the Prophet ﷺ. The author of *At-Talkhis* (Ibn Hajar) mentioned it and he did not speak against it.

## **Chapter Five**

# ***Al-Mu‘amalat***



## ***Al-Jihad***

### **The Ruling of Jihad**

The specific ruling of *Jihad* - which is fighting against the disbelievers and those who wage war against Islam - is that it is a collective compulsory duty. If some of the Muslims perform this duty, the rest of them are free from its obligation. This is due to Allāh's statement:

﴿وَمَا كَانَتِ الْمُؤْمِنُونَ كَافَّةً قُلُوبًا نَقَرَ مِنْ كُلِّ فِرْقَةٍ مِنْهُمْ طَائِفَةٌ لِيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ﴾

«And it is not (proper) for the believers to go out for fight (Jihad) all together. Of every troop of them, a party only should go forth, that they (who are left behind) may get instructions in religion (of Islam), and that they may warn their people when they return to them, so that they may beware (of evil).» (9:122)

As for those who are assigned to war duty by the Imam (Muslim Ruler), then *Jihad* becomes obligatory upon them. This is due to the Prophet's statement:

«وَإِذَا اسْتُغِيرْتُمْ فَانْفِرُوا»

«And if you are called (by the Muslim ruler) to go out to fight, then go forth for Jihad immediately.» (Al-Bukhari and Muslim)

Similarly, if an enemy attacks a Muslim land, then it is obligatory upon every inhabitant of it, including the women, to repel the enemy and fight against him.

### **Types of Jihad**

1. Performing *Jihad* against disbelievers and those who wage war against the Muslims. This may be achieved by the

hand, wealth, tongue or the heart. This is due to the Prophet's statement:

«جَاهِدُوا الْمُشْرِكِينَ بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ وَلِسَانِكُمْ»

«Perform Jihad against the polytheists with your wealth, your lives and your tongues.» (Ahmad, Abu Dawud, and An-Nasa'i, and its chain of narration is *Sahih*)

2. Performing *Jihad* against the rebellious sinners. This can be carried out with the hand, the tongue or the heart. Allāh's Messenger ﷺ said:

«مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ، وَذَلِكَ أَوْعَفُ الْإِيمَانِ»

«Whoever among you sees an evil, let him change it with his hand; if he is unable to do so, then with his tongue; and if he is unable to do so, then with his heart; and that is the weakest form of faith.» (Muslim)

3. Performing *Jihad* against the *Shaytan* (Satan). This can be achieved by repelling the suspicious things that he suggests and avoiding the lustful things that he makes attractive. This is due to the statement of Allāh:

﴿وَلَا يَغُرَّنَّكُم بِاللَّهِ الْغَرُورُ﴾

«And nor let the chief deceiver (Satan) deceive you about Allāh.» (31:33)

And His statement:

﴿إِنَّ الشَّيْطَانَ لَكُمْ عَدُوٌّ فَاتَّخِذُوهُ عَدُوًّا﴾

«Surely, Satan is an enemy to you, so take (treat) him as an enemy.» (35:6)

4. Performing *Jihad* against one's self: This can be done by encouraging oneself to learn the matters of the religion (Islam), acting according to them and teaching them to others. It may also be diverting the soul from its lustful and

whimsical desires, and resisting its frivolities.

Performing *Jihad* against oneself is one of the greatest types of *Al-Jihad*. It has even been called the greatest *Jihad*.<sup>[1]</sup>

### The Wisdom Behind *Jihad*

From the wisdom behind *Jihad*, with its various types, is that Allāh alone is worshipped, along with whatever accompanies that of repelling aggression and evil. It safeguards the properties and lives, sustains the truth and protects justice. It makes the good all encompassing and spreads virtue. Allāh the Almighty says:

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ لِلدِّينِ كُلِّهِ لِلَّهِ﴾

«And fight them until there is no more Fitnah (disbelief and polytheism) and the religion (worship) will all be for Allāh alone.» (8:39)

### The Virtues of *Jihad*

Several truthful Divine Revelations and authentic *Hadiths* are reported about the virtues of *Jihad* and martyrdom in the way of Allāh. This reflects the significance of *Jihad*, which is the greatest form of devotion and more virtuous than other forms of worships. Allāh says:

﴿إِنَّ اللَّهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنْ لَهُمُ الْجَنَّةُ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ لِيُخْرِجَ إِلَهُهُمُ الْفَاسِقِينَ﴾

[1] This is based upon a weak *Hadith* that was reported by Al-Baihaqi and Al-Khateeb in his *Tarikh*. They reported it from Jabir with the wording, "The Prophet ﷺ came back from a war expedition and said:

«قَدِمْتُمْ مِنَ الْجِهَادِ الْأَصْغَرِ إِلَى الْجِهَادِ الْأَكْبَرِ؟»

«You all have come with the best arrival, and you have come from the minor *Jihad* to the major *Jihad*.»

He then said:

«مُجَاهِدَةُ الْعَبْدِ هَوَاهُ»

«It is the striving of the servant against his desires.»

سَبِيلِ اللَّهِ فَيَقْتُلُونَ وَيُقْتَلُونَ وَعَدًا عَلَيْهِ حَقًّا فِي التَّوْرَةِ وَالْإِنْجِيلِ وَالْقُرْآنِ وَمَنْ أَوْفَى بِعَهْدِهِ مِنَ اللَّهِ فَاسْتَبِشِرُوا بِهِ إِنَّ اللَّهَ الَّذِي يَبْعَثُ فِيهِ رَسُولًا مِنْ دُونِ ذَلِكَ هُوَ الْقَوِيُّ الْعَظِيمُ ﴿٩١﴾

¶ Verily, Allāh has purchased of the believers their lives and their properties for (the price) that theirs shall be the Paradise. They fight in Allāh's cause, so they kill (others) and are killed. It is a promise in truth which is binding on Him in the Tawrah and the Injil and the Qur'an. And who is truer to his covenant than Allāh? Then rejoice in the bargain which you have concluded. That is the supreme success. ﴿9:111﴾

Allāh says:

﴿إِنَّ اللَّهَ يُحِبُّ الَّذِينَ يُقَاتِلُونَ فِي سَبِيلِهِ صَفًّا كَأَنَّهُمْ بُنْيَانٌ مَرْصُومٌ﴾

¶ Verily, Allāh loves those who fight in His cause in rows (ranks) as if they were a solid structure. ﴿61:4﴾

Allāh says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا هَلْ أَدُلُّكُمْ عَلَى مَعْرَزٍ تُجِيبُكُمُ مِنْ عَذَابِ أَلِيمٍ ﴿١٠﴾ تَوَكَّلُوا بِاللَّهِ وَرَسُولِهِ  
وَجَاهِدُوا فِي سَبِيلِ اللَّهِ يَأْمُرْكُمْ أَنْفُسُكُمْ أَنْ تَكُونُوا كَرًّا لَكُمْ إِنْ كُنْتُمْ تُحِبُّونَ ﴿١١﴾ يَغْفِرُ لَكُمْ ذُنُوبَكُمْ  
وَيُدْخِلْكُمْ جَنَّاتٍ تَجْرَى مِنْ تَحْتِهَا الْأَنْهَارُ وَسَكُنُوا فِيهَا ذَلِكَ الْفَوْزُ الْعَظِيمُ﴾

¶ O you who believe! Shall I guide you to a trade that will save you from a painful torment? That you believe in Allāh and His Messenger, and that you strive hard and fight in the cause of Allāh with your wealth and your lives: that will be better for you, if you but know! (If you do so) He will forgive you your sins, and admit you into Gardens under which rivers flow, and pleasant dwellings in Everlasting Gardens; that is indeed the great success. ﴿61:10-12﴾

Concerning the virtues of those martyred in Jihad, Allāh said,

﴿وَلَا تَحْسَبَنَّ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ أَمْوَاتًا بَلْ أَحْيَاءُ عِنْدَ رَبِّهِمْ يُرْزَقُونَ ﴿١٧٤﴾ فَرِحِينَ بِمَا  
عَاشَهُمْ اللَّهُ مِنْ فَضْلِهِ﴾

«Think not of those as dead who are killed in the way of Allāh. Nay, they are alive, with their Lord, and they have provision. They rejoice in what Allāh has bestowed upon them of His bounty.» (3:169-170)

Someone asked Allāh's Messenger ﷺ about the best of the people and He ﷺ replied:

«مُؤْمِنٌ يُجَاهِدُ بِنَفْسِهِ وَمَالِهِ فِي سَبِيلِ اللَّهِ تَعَالَى، ثُمَّ مُؤْمِنٌ فِي شِعْبٍ مِنَ الشَّعَابِ يَغْبُدُ اللَّهَ وَيَدْعُ النَّاسَ مِنْ شَرِّهِ»

«A believer who performs Jihad in Allāh's way with his life and wealth. Then a believer who stays in one of the mountain paths (during afflictions and disorder) worshipping Allāh and leaving the people secure from his mischief.» (Al-Bukhari and Muslim)

The Prophet ﷺ also said:

«مَثَلُ الْمُجَاهِدِ فِي سَبِيلِ اللَّهِ وَاللَّهُ أَعْلَمُ بِمَنْ يُجَاهِدُ فِي سَبِيلِهِ، كَمَثَلِ الصَّائِمِ الْقَانِمِ، وَتَوَكَّلَ اللَّهُ لِلْمُجَاهِدِ فِي سَبِيلِهِ إِنْ تَوَفَّاهُ، أَنْ يُدْخِلَهُ الْجَنَّةَ أَوْ يُرْجِعَهُ سَالِمًا مَعَ أَجْرٍ أَوْ غَنِيمَةٍ»

«The parable of one who perform Jihad in Allāh's way and Allāh knows best who really performs Jihad in His way - is like a person who observes fast and stands in prayer regularly. Allāh guarantees that He will admit the person who performs Jihad in His way into Paradise if he dies (i.e. is killed in battle), or He will return him to his home safely with rewards or war booty.» (Ibn Majah and it is in the two Sahihs with more complete wording than this.)

A man asked the Prophet ﷺ: "Guide me to an act that is equivalent to Jihad (in reward)." He ﷺ said:

«لَا أَحَدُ»

«I do not have such an act.»

Then he ﷺ added:



«هَلْ تَسْتَطِيعُ إِذَا خَرَجَ الْمُجَاهِدُ أَنْ تَدْخُلَ مَسْجِدَكَ فَتَقُومَ وَلَا تَقُتِرَ وَتَصُومَ وَلَا تَفْطِرَ؟»

«When the Muslim fighter has gone for Jihad, can you enter your Masjid and perform prayer without ceasing and observe fast and never break your fasting (i.e. until the fighter returns)?»

The man said: "But who can do that?" (An-Nasa'i and its meaning is in Al-Bukhari and Muslim)

And his ﷺ statement:

«وَالَّذِي نَفْسِي بِيَدِهِ لَا يُكَلِّمُ - أَيْ لَا يُجْرَحُ - أَحَدٌ فِي سَبِيلِ اللَّهِ، وَاللَّهُ أَعْلَمُ بِمَنْ يُكَلِّمُ فِي سَبِيلِهِ، إِلَّا جَاءَ يَوْمَ الْقِيَامَةِ وَاللَّزْنُ لَزْنُ الدِّمِّ، وَالرِّبْحُ رِبْحُ الْمِسْكِ»

«By Him in Whose Hand is my soul! None is wounded in Allāh's way - and Allāh knows best who gets wounded in His way - except he will come on the Day of Resurrection (with his wound) having the color of blood, but its fragrance will be that of musk.» (Al-Bukhari)

And his ﷺ statement:

«مَنْ مَاتَ وَلَمْ يَغْزُ وَلَمْ يُحَدِّثْ نَفْسَهُ بِالْغَزْوِ مَاتَ عَلَى شُعْبَةٍ مِنْ نِفَاقٍ»

«He who dies without having fought (in the way of Allāh) or without having thought of doing so, will die upon a branch of hypocrisy.» (Muslim)

And his ﷺ statement:

«وَالَّذِي نَفْسِي بِيَدِهِ لَوْ لَا أَنَّ رِجَالًا مِنَ الْمُؤْمِنِينَ لَا تَطِيبُ أَنْفُسُهُمْ أَنْ يَتَخَفُّوا عَنِّي، وَلَا أَحَدٌ مَّا أَحْمِلُهُمْ عَلَيْهِ مَا تَخَلَّفْتُ عَنْ سَرِيَّةٍ تَغْدُو فِي سَبِيلِ اللَّهِ، وَالَّذِي نَفْسِي بِيَدِهِ لَوِدِدْتُ أَنْ أَقْتَلَ فِي سَبِيلِ اللَّهِ، ثُمَّ أَخْبَا ثُمَّ أَقْتَلَ، ثُمَّ أَخْبَا ثُمَّ أَقْتَلَ»

«By Him in Whose Hand is my soul! Were it not for some

men among the believers who hate to be left behind me and whom I cannot provide with means of conveyance, I would certainly never remain behind any army-unit (detachment) going out for Jihad in Allāh's way. By Him in Whose Hand is my soul! I would love to be martyred in Allāh's way, then return to life again, then get martyred again, then come back to life again and then get martyred again.» (Al-Bukhari)

And his ﷺ statement:

«مَا اغْبَرَّتْ قَدَمًا عَبْدٌ فِي سَبِيلِ اللَّهِ فَتَمَسَّهُ النَّارُ»

«Any servant whose feet get covered with dust in Allāh's way will not be touched by the (Hell) Fire.» (Al-Bukhari)

And his ﷺ statement:

«مَا أَحَدٌ يَدْخُلُ الْجَنَّةَ يُحِبُّ أَنْ يَرْجِعَ إِلَى الدُّنْيَا وَلَهُ مَا عَلَى الْأَرْضِ مِنْ شَيْءٍ، إِلَّا الشَّهِيدُ، يَتَمَنَّى أَنْ يَرْجِعَ إِلَى الدُّنْيَا فَيُقْتَلَ عَشْرَ مَرَّاتٍ لِمَا يَرَى مِنَ الْكَرَامَةِ»

«No one who enters Paradise would like to return to this worldly life for the attainment of anything on the earth, except the martyr who wishes to return to the worldly life so that he may be martyred ten times because of what he sees of the honor (he receives from Allāh).» (Al-Bukhari and Muslim).

## **Ar-Ribat**

### **Definition**

*Ar-Ribat* is guarding Muslim armies with their arms and ammunition when they are in dangerous and precarious places where the enemy may invade and attack the Muslims and their land.

### **Its Ruling**

Guarding the Islamic frontier is a collective compulsory duty just like performing *Jihad*. If some people perform this duty, the rest of them are free from the duty. Allāh has

commanded the performance of this duty in His statement:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَصْبِرُوا وَصَابِرُوا وَرَاطِبُوا وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ﴾

﴿O you who believe! Endure and be more patient and guard (the Islamic frontier) and have Taqwa (piety and fear) of Allāh, so that you may be successful.﴾ (3:200)

### Its Virtue

Guarding the Islamic frontier for the sake of Allāh is one of the best deeds and greatest acts of drawing near to Allāh. The Messenger ﷺ said about it:

«رِبَاطُ يَوْمٍ فِي سَبِيلِ اللَّهِ خَيْرٌ مِنَ الدُّنْيَا وَمَا عَلَيْهَا»

«Guarding the Islamic frontier in Allāh's way for a single day is better than the world and all that it contains.» (Al-Bukhari and Muslim)

And he ﷺ said:

«كُلُّ النَّفْسِ يَخْتَمُ عَلَى عَمَلِهِ إِلَّا الْمُرَاطِبَ، فَإِنَّهُ يَنْمُو لَهُ عَمَلُهُ إِلَى يَوْمِ الْقِيَامَةِ، وَيُؤْمَرُ مِنْ فَتَانِ الْقَبْرِ»

«The actions of every deceased person come to an end (with his death) except the one who guards the Islamic frontier in Allāh's way. For verily his deeds will be made to go on increasing for him until the Day of Resurrection, and he will be secure from those who are responsible for interrogation and trials in the grave.» (Abu Dawud and At-Tirmithi, who graded it *Sahih*)

Those responsible for interrogations and trials in the grave are (the two angels) *Munkar* and *Nakir*.

And he ﷺ said:

«حَرَسُ لَيْلَةٍ فِي سَبِيلِ اللَّهِ خَيْرٌ مِنْ أَلْفِ لَيْلَةٍ يُقَامُ لَيْلُهَا وَبُصَامُ نَهَارُهَا»

«Spending a night performing guard duties (in Allāh's way) is better than one thousand nights during which standing in night prayer was performed and fasting was observed during its daytime.» (At-Tabarani and Al-Hakim and it is *Hasan*)

And he ﷺ said:

«حُرِّمَتِ النَّارُ عَلَى عَيْنٍ سَهَرَتْ فِي سَبِيلِ اللَّهِ»

«The Hell-fire has been forbidden for an eye, which passed the night vigilant in Allāh's way.» (At-Tabarani and Al-Hakim and it is Sahih)

And he ﷺ said:

«مَنْ حَرَسَ وَرَاءَ الْمُسْلِمِينَ مُتَطَوُّعًا لَمْ يَرَ النَّارَ بِعَيْنِهِ إِلَّا نَجَلَةً الْقَسَمِ»

«Whoever stands guard behind the Muslims (i.e. their army unit) voluntarily (for Allāh's sake), will not see the Hell-Fire with his eyes except for the breaking of the oath.» (Ahmad and its chain of narration is Sahih)

When the Prophet ﷺ commanded Anas bin Abu Marthad Al-Ghanawi to guard the Islamic army unit in night patrol, then in the morning he ﷺ came to him and said:

«هَلْ نَزَلْتَ اللَّيْلَةَ؟»

«Did you come down (from your watch post) tonight? »

Anas replied: "Not at all, except for performing the prayer and for answering the call of nature."

So he ﷺ said to him:

«فَدَأَوْجِبْتَ، فَلَا عَلَيْكَ أَنْ لَا تَعْمَلَ عَمَلًا بَعْدَهَا»

«Indeed, you have ascertained (the Paradise), therefore, there is no harm upon you if you do not perform any act after this.» (An-Nasa'i and Abu Dawud)

## The Obligation of Being Well Prepared for Jihad

Preparation for fighting in *Jihad* is done by producing its means, making available arms and weapons of war of various categories. This is also obligatory just as performing *Jihad* itself, except that it (preparation) is done before the actual *Jihad* and it precedes it. Allāh says:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ﴾

«And make ready against them all you can of power, including steeds of war, to threaten the enemy of Allāh and your enemy.» (8:60)

‘Uqbah bin ‘Amir said: I heard Allāh’s Messenger ﷺ speaking from the pulpit saying:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ، أَلَا إِنَّ الْقُوَّةَ الرَّمْيُ، أَلَا إِنَّ الْقُوَّةَ الرَّمْيُ، أَلَا إِنَّ الْقُوَّةَ الرَّمْيُ﴾

«Prepare for them (the enemy) with as much strength and power as you can! Verily, the power and strength is in archery. Verily, the power and strength is in archery. Verily, the power and strength is in archery.» (Muslim)

And he ﷺ said:

«إِنَّ اللَّهَ عَزَّ وَجَلَّ يُدْخِلُ بِالسَّهْمِ الْوَاحِدِ ثَلَاثَةَ نَفَرٍ الْجَنَّةَ: صَانِعُهُ يَحْتَسِبُ فِي صَنْعَتِهِ الْخَيْرَ، وَالرَّامِي بِهِ وَمُنْبَلَّهٌ، وَارْتَكَبُوا، وَأَنْ تَرْمُوا أَحَبُّ إِلَيَّ مِنْ أَنْ تَرْتَكِبُوا، لَيْسَ مِنَ اللَّهِو إِلَّا ثَلَاثُ: تَأْدِيبُ الرَّجُلِ فِي قَرَسِهِ، وَمَلَاعَبَتُهُ أَهْلَهُ، وَرَمْيُهُ بِقَوْمِهِ أَوْ نَبَلِهِ»

«Verily Allāh will admit three persons to Paradise for one arrow; the maker who has a good motive in making it, the one who shoots it, and the one who hands it to someone for shooting. Therefore, shoot and ride, but your (learning) shooting is more beloved to me than your (learning) riding. Three things are not a part of wasteful pastimes: A man’s training his steed (for combatant maneuvers), his playing with his family, and his shooting with his bow and its arrow.» (All of the Sunan compilers)

Based upon this, it is incumbent upon the Muslims, whether they belong to one nation or separated nations that they make ready and prepare combative arms and

ammunitions. It is also obligatory that they train some men in the disciplines of war and fighting as much as possible. This should not be merely for defending against the attacks of the enemy only. Rather, it should also be for performing battle expeditions in Allāh's way in order to raise the Word of Allāh, to spread justice, goodness and mercy on the earth.

It is also incumbent upon the Muslims to establish a system of compulsory military recruitment. Any teenage male reaching 18 years of age must join the military service for a period of one and half years. He must become proficient within this training period in all the disciplines of war and fighting. Then his name should be registered in the register of the general army bureau. With this he will be prepared to respond to the call of *Jihad* at any moment. If his intention is true and sincere he will be considered as partaking in guarding the Islamic army unit in Allāh's way as long as his name is in the record of the general bureau of army recruitment.

It is also compulsory upon the Muslims to build military factories to produce all of the weaponry that is available in the world. They should do this even if it leads to leaving off the nonessential things like types of food, drink, clothes and homes. This is a matter that will make them establish the obligation of *Jihad* and carry out its requirement in the best and most complete fashion. Otherwise, they would be sinners and subject to Allāh's punishment in this world and in the Hereafter.

### **The Pillars of *Jihad***

The Islamic fighting (*Jihad*), which will guarantee one of two good things - sovereignty or martyrdom - has the following pillars:

- 1) The righteous intention: The actions are based upon the intentions. The proper intention for *Jihad* is that the goal of it should be to exalt the Word of Allāh and nothing else.

Allāh's Messenger ﷺ was asked about a man who fights for honor or fights to be seen and for popularity, which one of them is in the way of Allāh? He ﷺ replied:

«مَنْ قَاتَلَ لِيَكُونَ كَلِمَةُ اللَّهِ فِي الْعُلْيَا فَهُوَ فِي سَبِيلِ اللَّهِ»

*«Whoever fights so that Word of Allāh (Islam) will be exalted, is the one who fights in the way of Allāh.»* (Al-Bukhari and Muslim)

2) He should fight according to the command of Muslim leadership, under his banner and with his permission. Just as it is not allowed for the Muslims - even though they may be few - to live without a Muslim leader (Imam), it is also not permissible to fight without the Muslim leader.

Allāh said:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

*«O you who believe! Obey Allāh and obey the Messenger, and those of you (Muslims) who are in authority.»* (4:59)

Thus, it is mandatory upon any Muslim group intending to perform *Jihad* in Allāh's way for the liberation of the frontiers from the grasp of the disbelieving enemies, to firstly pledge allegiance to a man among them who has most of the conditions for leadership. For example, he should be knowledgeable (of Islam), pious and suitably fit. Then they must organize their ranks, unite in their cause and start fighting and striving hard with their tongues, properties, and hands so that Allāh may grant them the victory.

3) Preparation of weapons and making available whatever is essential for *Jihad*, such as arms, ammunition and fighters, as much as possible. They must exhaust their ability and endeavor with utmost striving in this. This is due to Allāh's statement:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ﴾

﴿And make ready against them all you can of power.﴾ (8:60)

4) The approval of the parents and their permission, if both or one of them lives. This is due to the Prophet's statement to a man who sought his permission to partake in *Jihad*:

«أَخِي وَالِدَاكَ؟»

«Are your parents still alive?»

The man said, "Yes." The Prophet ﷺ then said:

«فَفِيهِمَا نَجَاهِدُ»

«Then strive hard in their service.» (Al-Bukhari)

However, if an enemy attacks the Muslim area or the Muslim leader has appointed a man for specific war duty, obtaining the permission of the parents is not required.

5) Obedience to the Muslim leader: Whoever fights disobeying the Muslim leader and dies, he died an ignorant death. Allāh's Messenger ﷺ said:

«مَنْ كَرِهَ مِنْ أَمِيرِهِ شَيْئًا فَلْيَضِرَّ عَلَيْهِ، فَإِنَّهُ لَيْسَ أَحَدٌ مِنَ النَّاسِ خَرَجَ مِنَ السُّلْطَانِ شَيْئًا فَمَاتَ عَلَيْهِ، إِلَّا مَاتَ مِيتَةً جَاهِلِيَّةً»

«If a person notices in his leader what he dislikes, he should be patient with him, because anyone of the people who departs from the Muslim ruler a hand span, and dies in that state, he died an ignorant death.» (Al-Bukhari and Muslim)

## What is Compulsory for Entering Combat?

A fighter who performs *Jihad* must have the following conditions when entering the war:

1) Standing firmly and exhibiting death-defying courage on the battlefield, as Allāh has forbidden showing defeat (by fleeing) before the enemy during battle. Allāh says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّا لَنَنصُرُ الَّذِينَ كَفَرُوا زَحَفًا فَلَا تُولُوهُمْ الْأَدْبَارَ﴾

﴿O you who believe! When you meet those who disbelieve, in a



*battlefield, never turn your backs to them.* ﴿8:15﴾

This applies only when the number of disbelievers is not more than twice the number of the Muslims. If their number exceeds this, such that a man from the Muslims must fight three or more disbelievers, for example, then showing defeat (by fleeing) is not forbidden. Likewise, whoever flees with the intention of deceiving the disbelievers in order to attack them (by surprise), or to retreat to a troop of Muslims, then this is not considered fleeing and there is no sin on him. This is due to Allāh's saying:

﴿إِلَّا مُتَحَرِّمًا لِّقِتَالٍ أَوْ مُتَحَرِّمًا إِلَىٰ يَنْفِرَ﴾

﴿Unless it be a stratagem of war, or to retreat to a troop (of his own).﴾ (8:16)

2) Remembrance of Allāh by heart and tongue, seeking strength from Allāh. This is done by recalling His promises and threats, as well as His help and support of His close friends. From this his heart will become firm and his worry and anxiety will be eased.

3) Obedience to Allāh and to His Messenger ﷺ. He must abstain from disobeying religious commands and he must not violate religious prohibitions.

4) Abstaining from disputes and differences in order to enter the battle in a unified row having no gaps or breaks in it. Their hearts should be bound together while their bodies are as if they were a solid structure, each part supporting the other.

5) Having patience, advising others to be patient and observing death defying courage while entering the battle. This is so that the enemy would be horrified and their ranks defeated. Allāh says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا لَقِيتُمْ فِئَةً فَاغْلُظُوا وَاذْكُرُوا اللَّهَ كَثِيرًا لَّعَلَّكُمْ تُفْلِحُونَ  
وَاطِيعُوا اللَّهَ وَرَسُولَهُ وَلَا تَسْرِعُوا الْقِتْلَةَ وَتَذَهَبَ رِعَاكُمْ وَأَصِدْرُوا إِنَّ اللَّهَ مَعَ

الْقَدِيرِ ﴿

﴿O you who believe! When you meet (an enemy) force, take a firm stand against them and remember the Name of Allāh much (both with tongue and mind), so that you may be successful. And obey Allāh and His Messenger, and do not dispute (with one another) lest you lose courage and your strength departs, and be patient. Surely, Allāh is with those who are patient.﴾ (8:45-46)

### Manners Required During Jihad

There are certain manners that must be observed during Jihad, for they are the determining factors of victory. These manners are the following:

- 1) Abstaining from disclosing the secrets of the army and its war strategies. Whenever the Messenger of Allāh ﷺ intended to set out for any battle he would act as though he were intending something else (being a stratagem of war). This is reported in the *Sahih*.
- 2) Using code words, symbols and signals among the soldiers. So that they recognize one another when they are among the enemy troops (during battle) or somewhere near them. The Prophet ﷺ said:

«إِنْ بَيَّكُمُ الْعَدُوُّ فَقُولُوا: حَمَّ لَا يُنْصَرُونَ»

«If your enemy attacks you by surprise, then you should say, 'Ha-Mim, they will not be helped.'»

The sign of a war party that was under the commander of Abu Bakr, was "Amit Amit" (kill, kill). (At-Tirmithi and others and it is *Sahih*.)

- 3) Silence when entering the battle, as shouting and roaring will cause failure, will waste strength and divert concentration. This is due to what Abu Dawud reported that the Companions of the Prophet ﷺ disliked making noises and shouting while fighting.

4) Selection of the best and proper places for battle, keeping the soldiers in certain order and choosing the best and appropriate time to carry out the attack against the enemy. It is from the guidance of the Prophet ﷺ to select an appropriate place and time to wage the battles. (At-Tirmithi)

5) Calling the disbelievers to the Path of Islam before declaring war against them and attacking them, or seeking their surrender with the condition that they pay the *Jizyah* (tax upon non-Muslims). If they refuse (these two options), then they should be fought (in war). When the Prophet ﷺ would send a commander in charge of an army expedition or regiment, he would instruct him to have *Taqwa* (piety and fear) of Allāh, particularly regarding himself. He also would instruct him to treat the Muslims who were with him well. The Prophet ﷺ said:

«إِذَا لَقِيتَ عَدُوَّكَ مِنَ الْمُشْرِكِينَ فَادْعُهُمْ إِلَى إِحْدَى ثَلَاثِ خِصَالٍ، فَأَيُّهَا أَجَابُوكَ إِلَيْهَا فَاقْبَلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، ادْعُهُمْ إِلَى الْإِسْلَامِ، فَإِنْ أَجَابُوكَ فَاقْبَلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، فَإِنْ أَبَوْا فَادْعُهُمْ إِلَى إِعْطَاءِ الْجِزْيَةِ، فَإِنْ أَجَابُوكَ فَاقْبَلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، فَإِنْ أَبَوْا فَاسْتَعِزْ بِاللهِ وَقَاتِلْهُمْ»

*«When you meet your enemy from the polytheists, invite them to one of three things. Whichever of them they agree to with you, then accept it from them and leave them alone. Call them to Islam, and if they agree, accept it from them and leave them alone. However, if they refuse (Islam), then invite them to pay the Jizyah. If they agree with you (to pay the Jizyah), accept it from them and leave them alone. If they refuse (to pay the Jizyah), then seek Allāh's help and fight them.»* (Muslim)

6) Refraining from stealing from war booty, killing women, children, elderly people and monks if they do not take part in the war. If they participate in the fighting, they are to be fought. Allāh's Messenger said to his commanders:

«انْطَلِقُوا بِاسْمِ اللهِ وَبِاللهِ وَعَلَى مِلَّةِ رَسُولِ اللهِ وَلَا تَقْتُلُوا شَيْخًا قَانِيًا وَلَا طِفْلًا وَلَا صَغِيرًا وَلَا امْرَأَةً، وَلَا تَغْلُوا وَضُمُوا غَنَائِمَكُمْ وَأَصْلِحُوا وَأَحْسِنُوا، إِنَّ اللهَ

يُحِبُّ الْمُحْسِنِينَ

*«March in the Name of Allāh, and by Allāh, and upon the religion of the Messenger of Allāh. Do not kill a feeble, elderly person, nor an infant, nor a child, nor a woman, and do not steal from the war booty. Collect the war booty, and make peace and behave in a good manner. For verily, Allāh loves the doers of good.»* (Abu Dawud and its meaning is in the *Sahih*.)

7) Refraining from behaving treacherously with the one whom a Muslim has given shelter and guaranteed protection of his life. This is due to the Prophet's saying:

«لَا تَغْدِرُوا»

*«Do not be treacherous.»* (Muslim)

And his saying:

«إِنَّ الْغَادِرَ يُنْصَبُ لَهُ يَوْمَ الْقِيَامَةِ، فَيَقَالُ: هَذِهِ غَدْرَةُ فُلَانٍ بْنِ فُلَانٍ»

*«The treacherous person will have a banner raised for him on the Day of Resurrection and it will be said, 'This is the treachery of so-and-so, the son of so-and-so.»* (Al-Bukhari and Muslim)

8) Refraining from burning the enemy with fire. This is due to the Prophet's saying:

«إِنْ وَجَدْتُمْ فُلَانًا فَاقْتُلُوهُ، وَلَا تُحْرِقُوهُ بِالنَّارِ، فَإِنَّهُ لَا يُعَذَّبُ بِالنَّارِ إِلَّا رَبُّ النَّارِ»

*«If you find so-and-so kill him, but do not burn him with fire. For verily none punishes with fire except the Lord of the Fire (i.e. Allāh).»* (Al-Bukhari)

9) Refraining from mutilating the dead bodies of the enemy. This is due to the statement of 'Imran bin Husayn: "The Messenger of Allāh ﷺ used to encourage us to give in charity and he prohibited us from mutilating." (Abu Dawud with a *Sahih* chain of narration)

Also due to the Prophet's statement:

«أَعَفُّ النَّاسِ قِتْلَةَ أَهْلِ الْإِيمَانِ»

«The most self-restraining of the people in their killing are the people of faith.» (Abu Dawud with a good chain of narration)

10) Invoking (Allāh) for victory against the enemies, as the Prophet ﷺ used to say after mobilizing for the battle:

«اللَّهُمَّ مُتْرِلَ الْكِتَابِ وَمُجْرِيَ السَّحَابِ وَهَازِمَ الْأَحْزَابِ، اهْزِمْنَاهُمْ، وَانصُرْنَا عَلَيْهِمْ»

«O Allāh, Revealer of the Book, Mover of the clouds, Defeater of the Confederates, defeat them and help us against them.» (Al-Bukhari and Muslim)

And his statement:

«بِئْتَانٍ لَا تُرَدَّانِ أَوْ قَلَمًا تُرَدَّانِ: الدُّعَاءُ عِنْدَ النِّدَاءِ وَعِنْدَ الْبَأْسِ حِينَ يُلْحِمُ بَعْضُهُمْ بَعْضًا»

«Two supplications are never rejected (or he said: "are seldom rejected"): a supplication during the call (for prayer) and a supplication during the heat of battle when the opposing forces meet each other.» (Abu Dawud with Sahih chain of narration)

## **The Agreement of Protection given to the Non-Muslim Subjects under the Islamic Government, and its Regulations**

1. The Agreement of protection given to the non-Muslim subjects under the Islamic Government

The agreement of protection is an assurance to those disbelievers who respond to Muslims by paying the *Jizyah* tax. It is a pact in which they promise the Muslims to adhere to the laws of the Islamic *Shari'ah* related to the prescribed laws of punishment, such as for murder, stealing and breach of honor.

2. Who is responsible for the agreement of protection given to the non-Muslim subjects under the Islamic Government?

It is only the Imam or his deputy among the military commanders who has the authority to give the agreement of protection to non-Muslims. As for others, they have no right to do that. As for giving personal protection and security, it is permissible for any Muslim man or woman to do that. The proof is that Umm Hani, the daughter of Abu Talib, gave protection to a man from the polytheist on the day of the conquest of Makkah. She went to the Messenger ﷺ and mentioned that to him. So, he ﷺ said:

«قَدْ أَجَرْنَا مَنْ أَجَرْتَ وَأَمَّنَّا مَنْ أَمَّنْتَ يَا أُمَّ هَانِيَّةُ»

*«We have given protection to those whom you have granted it, and we have given safety to those whom you have assured it, O Umm Hani!»* (Al-Bukhari)

3. Distinguishing between the Muslims and non-Muslims who live under the Islamic Government

It is obligatory for the non-Muslims to distinguish themselves from Muslims in the matter of clothing and other things, so that they will be recognized (as non-Muslim). It is not permissible to bury them in the Muslims' cemetery. Similarly, it is not permissible to stand for them, nor is it permissible to precede them with the greetings of peace. Also, they should not be given seats of honor at gatherings. This is due to the Prophet's statement:

«لَا تَبْدُؤُوا الْيَهُودَ وَالنَّصَارَى بِالسَّلَامِ، فَإِذَا لَقِيتُمْ أَحَدَهُمْ فِي الطَّرِيقِ فَاضْطَرُّوهُ إِلَى أَضْيَقِهِ» .

*«Do not initiate the greetings of peace with the Jews and the Christians. If you meet any one of them on the road, force him to go to the narrowest part of it.»* (Muslim)

### **Things Forbidden to Non-Muslims living under the Islamic Government**

Certain things are forbidden to the non-Muslims living under the Islamic Government, such as:

1) Constructing Churches or Synagogues, or renovating the demolished ones. This is due to the Prophet's statement:

«لَا تُبْنَى الْكَنِيسَةُ فِي الْإِسْلَامِ، وَلَا يُجَدِّدُ مَا خَرَبَ مِنْهَا»

«The church is not built in Islam and those that are ruined are not to be renovated.» (The author of *Al-Mughni* related it, as did the author of *Nayl Al-Awtar*, and they did not consider it defective.)

2) Erecting the residence of non-Muslims above the homes of the Muslims. This is due to the Prophet's saying:

«إِلْسْلَامُ يَغْلُو وَلَا يُغْلَى عَلَيْهِ»

«Islam is always superior and nothing is loftier than it.» (Al-Bayhaqi and it is *Hasan*)

3) Publicly drinking intoxicants or eating swine (pork) in front of the Muslims, or eating and drinking during the daytime of Ramadhan. Rather, they must conceal whatever things are forbidden to Muslims, due to fear of them causing temptation (to do what is forbidden) for the Muslims.

### **Things that invalidate the Agreement of Protection given to Non-Muslims living under the Islamic Government**

There are certain things that invalidate the agreement of protection given to the non-Muslims living under the Islamic Government such as:

1) Refusing to pay the *Jizyah* tax.

2) Lack of adherence to the Islamic laws, which was a condition in the contract.

3) Aggression against Muslims by killing, robbery, spying, or

giving asylum to such a spy for the enemy, or committing fornication or idolatry with Muslim women.

4) Mentioning Allāh, His Messenger ﷺ or His Book in a blasphemous way.

### **Rights of Non-Muslims living under the Islamic Government**

It is the duty of Muslims to protect the lives, property, and honor of non-Muslims living under the Islamic Government. The Muslims should avoid causing them any harm as long as they comply with the agreement and do not breach it. This is due to the Prophet's statement:

«مَنْ آذَى ذِمِّيًّا فَأَنَا خَصْمُهُ يَوْمَ الْقِيَامَةِ»

*«Whoever harms the Thimmi (non-Muslim living under the Islamic Government), I will argue against him on the Day of Resurrection.»* (Reported by Al-Khateeb in his *Tarikh* from Ibn Mas'ud with a *Hasan* chain of narration)

If they breach the agreement and break in some way, their blood and properties become lawful (i.e. no longer sacredly protected). However, their women and children would remain safe, as no one is to be punished for the sin of another.

### **Truce, Pact and Peace Treaty**

#### **1) The Truce**

It is permissible to make a truce with the warring factions if that will produce a real benefit for the Muslims. The Prophet ﷺ made truces in his wars with many of the warring factions. For example, he made a truce with the Jews of Al-Madinah when he settled there. This treaty lasted until they breached it and became treacherous with him. Therefore, the Prophet ﷺ fought them and expelled them from Al-Madinah.



## 2) The Pact

It is permissible to make a pact to refrain from any aggression and live with friendly neighborliness between the Muslims and their enemies if this will produce a favorable benefit for the Muslims. The Messenger of Allāh ﷺ made pacts and he would say:

«نَفِي لَهُمْ بِعَهْدِهِمْ، وَنَسْتَعِينُ اللَّهَ عَلَيْهِمْ»

«We will fulfill the obligations to them due to their pact, and we seek Allāh's help against them.» (Muslim)

Allāh said:

﴿إِلَّا الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْقُصُوكُمْ شَيْئًا وَلَمْ يُظَاهِرُوا عَلَيْكُمْ أَحَدًا فَأَتِمُّوا إِلَيْهِمْ عَهْدَكُمْ إِلَىٰ مَضِيِّهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ﴾

«Except those of the Mushrikun (polytheists) with whom you have a treaty, and who have not subsequently failed you in aught, nor have supported anyone against you. So fulfill their treaty to them for the end of their term. Surely, Allāh loves Al-Muttaqun (the pious).» (9:4)

The Messenger of Allāh ﷺ forbade killing a person having a treaty with the Muslims.

He ﷺ said:

«مَنْ قَتَلَ مُعَاهِدًا لَمْ يَرِخْ رَائِحَةَ الْجَنَّةِ»

«Whoever killed a person having a treaty with the Muslims, shall not smell the fragrance of the Paradise.» (Al-Bukhari)

And he ﷺ said:

«إِنِّي لَا أَخِيسُ بِالْعَهْدِ، وَلَا أَخِيسُ الْبُرْدَ»

«I do not break the treaty or imprison the emissaries.» (Abu Dawud and An-Nasa'i, and Ibn Hibban graded it Sahih)

## 3) The Reconciliation (or Peace Treaty)

It is permissible for the Muslims to make reconciliation with

whomever they wish of their enemies if they are compelled to do so, and the treaty will bring about benefits that they would not get without it. The Prophet ﷺ made the peace treaty of Al-Hudaybiyah with the people of Makkah. Likewise, he made a treaty with the people of Najran under the condition that they pay some wealth. He made a peace treaty with the people of Bahrain under the condition that they pay him a specified amount of *Jizyah* tax. Similarly, he made a peace treaty with Akidar Dawmah to spare his life under the condition that he pay the *Jizyah* tax.<sup>[1]</sup>

## Gains from the War

### 1) Distribution of War Booty

War booty is the wealth that is captured in the land of war. Its ruling is that it is divided into five one-fifth shares. The Muslim leader (Imam) takes a fifth of it and spends it on the public welfare of the Muslims.<sup>[2]</sup> As for the remaining portions, they are distributed among the soldiers who were present at the battle, regardless of whether they fought or not. This is due to 'Umar's statement, "The war booty is for those who attend the battle." (Al-Bukhari) Of these, three shares are given to cavalymen (those who fought on horseback), and one share to the fighters on foot. Allāh said:

﴿وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَإِنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ  
وَأَنْتُمْ أَلْسِنَةٌ حَسْبَةٌ مَّا مَنَعْتُمْ بِاللَّهِ وَمَا أَزَلَّنَا عَلَىٰ عَبْدِنَا يَوْمَ الْفُرْقَانِ﴾

﴿And know that whatever of war booty that you may gain, verily, one-fifth (1/5th) of it is assigned to Allāh, and to the Messenger, and to the near relatives [of the Messenger]

[1] Akidar was an Arab from Ghassan. In this is evidence that the *Jizyah* tax is taken from people who are not People of the Book (i.e. Jews and Christians). This was the view of Malik.

[2] That the Imam spends from a fifth of the war booty is the view of Malik and it was also the view preferred by Shaykh-ul-Islam Ibn Taymiyyah and Ibn Kathir.

(Muhammad ﷺ), (and also) the orphans, Al-Masakin (the poor) and the wayfarer, if you have believed in Allāh and in that which We sent down to Our servant (Muhammad ﷺ) on the Day of Criterion (between right and wrong). ﴿8:41﴾

**Note:** An army can partake in the war booty with its detachments. If the Muslim leader dispatches an army detachment and they take anything as spoils of war, it should be distributed among the rest of the individuals in the army. It should not be made specifically for the detachment alone.

## 2) Spoils of War gained without Fighting

This refers to the property that the disbelievers and the enemy soldiers left behind, who fled before starting the battle and fighting.

**Its Ruling:** The Muslim Ruler should distribute it for the specific and general public welfare of the Muslim community just like the fifth division (that he gets) out of the war booty. Allāh said:

﴿مَا آتَاكَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ﴾

﴿What Allāh gave as booty (Fai') to His Messenger from the people of the townships - it is for Allāh, His Messenger, the kindred (of Messenger Muhammad ﷺ) the orphans, Al-Masakin (the poor), and the wayfarer, in order that it may not become a fortune used by the rich among you.﴾ (59:7)

## 3) Land Tax

It is a tax imposed on the lands that are occupied by Muslims by force. The Muslim leader may choose upon his occupying a land by force, between dividing it up among the fighters or making it as an endowment (Waqf) for the Muslims and levying an annual land tax permanently upon every Muslim and non-Muslim who occupies the land. He then spends its revenue for the public welfare of the

Muslim community. This is what 'Umar did when he conquered the lands of Ash-Sham (Greater Syria), Iraq and Egypt (this is recorded in the *Sahih*).

**Note:** If the Imam makes a treaty with the enemy for payment of a fixed land tax from their land, then the occupants of the land embrace Islam, they will be exempt from the tax because of their acceptance of Islam. This is different than the case of conquering the land by force (i.e. fighting with the enemies). In such a case, if the people of the land accept Islam (after fighting the Muslims) the tax will not be exempt from that land.

#### 4) *Al-Jizyah* (Tax upon Non-Muslims)

This is a financial tax taken at the end of the year from the non-Muslims living under the protection of Islamic Government. The amount of this tax upon the residents of a land captured by Muslim fighters by force is four dinars of gold or forty dirhams of silver. The tax should be collected from the mature male adults, excluding the women and children. The poor and the destitute, those feeble who are unable to earn due to their illness, and the extremely elderly are exempt from paying this tax. As for the people having a treaty, it is collected from them based upon whatever they agreed to pay as per the treaty. However, if they embrace Islam, they will be completely exempt from the tax. The ruling of the *Jizyah* tax is that it should be used for the public welfare of the Muslim community. The basis for this tax is the statement of Allāh the Almighty:

﴿فَقَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾

﴿Fight against those who believe not in Allāh, nor in the Last Day, nor forbid that which has been forbidden by Allāh and His Messenger, and those who acknowledge not the religion of truth (i.e. Islam) among the People of the Scripture (Jews and

Christians), until they pay the Jizyah with willing submission, and feel themselves subdued. ﴿9:29﴾

### 5) Extra Booty

Extra booty is what the Imam gives as an extra grant to whoever carries out a particularly important war mission. Thus he gives them this extra grant in addition to their shares out of the war booty after its fifths are divided. However, it should not exceed more than one-fourth (of the total booty) if their mission was sent when the army was advancing toward the enemy land. It should not exceed more than the one-third (of the total booty) if the mission was sent when the army was returning from the enemy land. This is due to the statement of Habib bin Maslamah who said: "I witnessed the Messenger of Allāh ﷺ distributing extra booty, giving one-fourth at the beginning and one-third upon the return." (Ahmad and Abu Dawud. Al-Hakim and others have graded it *Sahih*)

### Prisoners of War

The people of knowledge among the Muslims disagree concerning the ruling of the disbelieving prisoners of war, as to whether they should be killed, ransomed, granted amnesty and pardon, or made slaves. The reason for their differences is that the Qur'anic verses about this topic are general. Among them is the statement of Allāh:

﴿فَضْرِبُوا الرِّقَابَ حَتَّىٰ إِذَا انْخَضُوا عَنْ أَعْقَابِكُمْ فَامْشُوا عَلَيْهِمْ مَشْيَ وَّحْدَانٍ فَاسْتَغْنُوا عَنْهُمْ وَإِنَّهُمَا لَبِغَاءٌ لِّكَافِرِينَ﴾

﴿So smite (their) necks till when you have killed and wounded many of them, then bind a bond firmly (on them, i.e. take them as captives). Thereafter (is the time) either for generosity (i.e. free them without ransom) or ransom.﴾ (47:4)

This noble verse gives the Imam an option of either pardoning the prisoners of war and letting them go freely without any ransom, or taking whatever he wills as ransom for them, such as wealth, weapons or men (i.e. exchanging

them for Muslim captives). Allāh the Almighty also says:

﴿فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ﴾

﴿Then kill the Mushrikun (polytheists) wherever you find them.﴾ (9:5)

In this verse, there is a ruling of killing the polytheists without capturing them as prisoners of war in order to be kind to them (by letting them go) or ransoming them.

The majority of the scholars hold the view that the Imam has an option between killing, ransoming, granting amnesty or using them as slaves. This is based upon whatever he views as beneficial for the Muslims. In the *Sahih* it is confirmed that the Messenger of Allāh ﷺ killed some prisoners of war, accepted ransom from some others and pardoned some others. His practice was dependent upon gaining what was beneficial to the public welfare of the Muslim community.

## Horse Racing, Shooting Competition, and Physical and Intellectual Sports

### The Purpose of these Sports

The purpose of all of these sports, which were known at the beginning of Islam as *Al-Furusiyyah*, is to aid in the prevalence of the truth, assist it and defend it. It is not meant to attain and amass wealth, nor fame and love of popularity. Neither is its goal arrogance and corruption in the land, like the situation of most of the athletes today. The goal of all the different types of athletic exercises is *Taqwa* (piety and fear of Allāh) and gaining the strength and might to fight in the way of Allāh (*Jihad*). It is obligatory to understand the concept of athletics in Islam in this way. If anyone understands it in other than this context, he has removed it from its good purpose and given it an evil purpose, such as vain and false amusement and forbidden gambling.

The basis for the legislative permissibility of athletic exercise is Allāh's statement:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ﴾

﴿And make ready against them all you can of power.﴾ (8:60)

And the statement of the Messenger ﷺ:

«الْمُؤْمِنُ الْقَوِيُّ خَيْرٌ وَأَحَبُّ إِلَى اللَّهِ مِنَ الْمُؤْمِنِ الضَّعِيفِ»

«The strong believer is better and more beloved to Allāh than the weak believer.» (Ibn Majah)

Power in Islam includes the sword, the spear, as well as proof, and evidence.

### **Types of sports in which it is permissible to put up prize money (for the winner) and those in which it is not permissible to do so**

Putting up and receiving a guaranteed prize is permissible in the racing of horses, and camels, and in archery, according to the consensus of the Muslim scholars. Allāh's Messenger ﷺ said:

«لَا سَبَقَ إِلَّا فِي خُفٍّ أَوْ خَافِرٍ أَوْ نَضَلٍ»

*«No stake is acceptable except in the racing of the horse or the camel or in archery.»* (Abu Dawud, An-Nasa'i, and Ibn Majah)

The stake refers to a guaranteed prize that the winner takes in a race or in archery. As for the other types of sports and athletics, like wrestling, swimming, racing on foot, on bicycles, and in cars, lifting weights, racing on mules and donkeys, racing of sea boats, competition in answering scholarly issues, memorizing them and learning them by heart. Although these types of athletics are permissible, setting and receiving a guaranteed prize is not lawful in them according to the correct view. The wrestling of the Messenger ﷺ with Rukanah bin Zayd cannot be used as a proof for the permissibility (of taking a prize in other sports). For verily when the Messenger ﷺ wrestled with him and defeated him, he returned to him the sheep that Rukanah had made a guaranteed prize for the winner of the match. Similarly, there is no proof of permissibility in the betting of (Abu Bakr) As-Siddiq with the Quraysh concerning the triumph of Romans and his taking the prize from them when he won the bet. For verily this was at the beginning of Islam before most of the Divine Rules were revealed.

The wisdom behind limiting the permissibility of betting and accepting the prize of bets to the three mentioned competitions in the above *Hadith* is because these three sports have an effect upon *Jihad*. As for the rest of the



different types of athletics, they have no effect on *Jihad*. This is because *Jihad* depends upon riding horses, camels and archery. If an analogy is made between the combat tanks and aircraft of modern times and the camels and horses, it is correct to race them and it is permissible to receive set prizes from such racing. This is because such things have a great effect upon *Jihad*, which is what is intended from all the rest of the physical sports. Likewise, if the Islamic Law had allowed betting and receiving prizes for other types of physical athletics besides the three that are mentioned in the above *Hadith*, some people would take them as a profession and make them their means of livelihood and revenue. If this is the case, they will forgetfully neglect the noble cause for which the sports have been allowed, which is to gain strength for *Jihad*, so that the truth will be manifest, and falsehood abolished in the land. This is by Allāh being worshipped alone and His legislation being established so that the people will be happy in their worldly affairs and in the Hereafter, and they will not be miserable.

### **How to designate a Prize in Racing and Archery Competitions**

The best way for setting the prize in racing and archery competitions is that the government should designate it, or a charitable organization, or some of the philanthropic volunteers. This is so that it (the set prize) will be free from any dubious sources and the competition will be purely for encouraging the preparation for *Jihad*. Moreover, there is no harm if one of the racers or archers in the competition set the designated prize. For example, if one of them says to another, 'If you win you will get ten or a hundred dinars from me.' The majority of the scholars have permitted that both competitors set a prize if they enter a third competitor into the competition with them, who does not place anything in the prize. This is the view of Sa'īd bin Al-Musayyab. Imam Malik rejects this view while others

support it.<sup>[1]</sup>

## How to Conduct the Racing and Archery Competitions

It is necessary to consider the following in racing:

- 1) Specifying the mount for the race, such as a horse or a camel or a combat tank or aircraft.
- 2) Unifying the species of the mount intended for racing. Therefore, no race should be between a camel and a horse, for example.
- 3) Fixing the distance intended for race with the consideration that it should not be too short or too long.
- 4) Specifying the prize, if the competition is for a prize.

Then the horses intended for racing should be lined up in one row. Their hooves are placed in an equal line. The referee then instructs the competitors to get ready. Then he pronounces the *Takbir* three times. Upon hearing the third *Takbir* the competitors will start. Two referees are positioned at the finish line, with each of them standing at opposite ends of the line. They stand at the finish line in order to see which of the competitors has reached there first, and thus won the race. If a group reaches the racetrack, the prizes should be distributed among only ten competitors from them. The first prize will be given to the greatest horse called *Al-Majla*. Then *Al-Masla*, *At-Tali*, *Al-*

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[1] This issue is known as the issue of *Al-Muhallil* and its purpose is to prevent the matter from resembling gambling. This is because if both of the competitors place a share of the prize, each of them will desire to win the total purse and each will fear the burden of debt (if he loses), and this is the condition of the gamblers. However, if they enter a third party among them (in the competition), who does not place anything into the prize purse, the picture no longer resembles the image of gambling. Ibn Al-Qayyim criticized this issue and considered it to be lacking justice and fairness.

*Bari'*, *Al-Murtah*, *Al-Khutta*, *Al-Atif*, *Al-Mu'ammal*, *Al-Latim*, *As-Sakit* and *Al-Ghaskal* respectively. No others are given any prize after *Al-Ghaskal*.

*Al-Jalb* and *Al-Janb* races are not permissible, as Allāh's Messenger ﷺ has forbidden these types of racing and said:

«لَا جَلَبَ وَلَا جَنْبَ، وَلَا شِغَارَ فِي الْإِسْلَامِ»

«There is no *Jalab* and no *Janab* and no *Shighar* in Islam.»

(Abu Dawud and An-Nasa'i)

*Al-Jalab* is when a competitor designates someone to shout at his horse to make it run faster.

*Al-Janab* is when a competitor makes another horse run alongside his horse to motivate it and encourage his horse to run (faster).

As for archery, it is a competition of shooting with arrows, rifles, machine guns or anything similar. Archery is better than horseracing and anything similar to it. This is due to the Messenger of Allāh's statement:

«أَزْمُوا وَارْكَبُوا وَأَنْ تَرْمُوا أَحَبُّ إِلَيَّ مِنْ أَنْ تَرْكَبُوا»

«Shoot and ride, but your shooting is dearer to me than your riding.»

This is because the effect of shooting during *Jihad* is stronger than riding, as is well known.

The following things should be considered in archery:

- 1) The competition should be between those who are good at shooting.
- 2) Knowledge of the number of shots hitting the target. This is by limiting them to such and such (number of) hits.
- 3) Knowledge of the type of archery, whether it is *Mubadirah* or *Mufadhilah*. *Mubadirah* is when both competitors say that whoever hits the target correctly with five shots out of twenty shots will be the winner.

*Mufadhilah* is when both competitors say that whoever hits the target with five shots more than his opponent within twenty shots will be the winner.

4) Determine the target and specify it. It should be within a reasonable range, neither too far away nor too close.

After concluding the agreement for the archery, one of them should start shooting. In case any dispute arises regarding who will start first, it should be decided by drawing lots between them. If the person who put up the designated prize begins, that is better. The competition should be free from any injustice or unfairness until the end. Whoever wins the competition will receive the prize.

**Note:**

Horse racing and shooting are a permissible contract and they are not compulsory. Therefore, every contestant has the right to cancel the agreement whenever he wishes. Whoever says, "Whoever defeats me will get such and such prize," this is just a promise from him. Therefore, he is not compelled to implement it. However, he should implement it out of *Taqwa* (piety and fear of Allāh) and generosity, for breaking a promise is forbidden. Whoever says, 'Whomever of you I beat, then he must give me such and such prize or he must do such and such,' then this is not permissible, because it is not considered from the lawful types of racing. Therefore, such earning becomes illegal and through unlawful means.

**Races that are not Permissible with a Promised Prize or Otherwise**

It is not permissible to compete and have contests in backgammon (or dice games), chess and anything similar to them from the games of the modern times, like caroms, card games, dominos, table tennis (ping pong), and similar games. Soccer is permissible with the condition that the player intends by it to preserve his physical stamina and

strength, thus allowing him healthy growth for the performance of *Jihad*. Also, his thighs must not be exposed while playing and his obligatory prayers should not be delayed due to it. Likewise, the play should be free of obscenity; and vain and false talk, such as cursing, abusive words and anything similar.

**Note:**

It is permissible for any doer of good to say, "Whoever memorizes such and such part (*Juz'*) of the Book of Allāh, or a *Hadīth* from the Messenger's *Hadīths*, or solves an issue of an obligatory religious nature or mathematical nature, will get such and such wealth or prize." This should be done with the intention of encouraging the memorization of the Book of Allāh and the Sunnah of the Messenger of Allāh ﷺ, and the memorization of the issues of knowledge, which are necessary for the Muslim community. Whoever wins the contest, he may accept the prize if he wishes or leave it. It is the duty of the one who offers the pledge to submit it to the winner.

## Business Deals

### The Ruling of Trading

Trading is legislated in the Mighty Book (the Qur'an). Allāh said:

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

«Allāh has permitted trading and forbidden Riba.» (2:275)

Also, the Sunnah of the Prophet ﷺ has approved of it, both practically and verbally.

The Prophet ﷺ made transactions by buying and selling. He said:

«لَا يَبِيعُ حَاضِرٌ لِّدَّارٍ»

«A city dweller should not sell (items) for a desert dweller.»

(Al-Bukhari and Muslim)

And he ﷺ said:

«الْبَيْعَانِ بِالْخِيَارِ مَا لَمْ يَفْتَرَقَا»

«Both parties in a business transaction have the (right of) choice (to confirm or annul it) as long as they have not separated.» (Al-Bukhari and Muslim)

### Its Wisdom

The wisdom behind the legality of business is to allow man to gain his needs from that which is owned by his brother without any inconveniences or harms.

### Its Pillars

The pillars of trade are five:

1) The seller. He must be the owner of whatever he sells or he should have the permission to sell what he is selling. He

should be responsible and not a foolish person.

2) The buyer. He should be someone who is allowed to carry out transactions. This means that he should not be foolish nor a youth who does not have permission to make deals.

3) The valued merchandise. The goods intended for sale must be lawful, pure and capable of being delivered. It should be known to the buyer (what it is), even if it is known only by its description.

4) The manner of the contract. This is the verbal offer and acceptance. For example, the buyer saying, "Sell me such and such thing." Then, the seller responds, "I have sold it to you." It may also be done by action, for example a person saying, "Sell me a garment," and the seller gives him the said cloth.

5) Mutual consent. No business transaction is valid without the mutual consent of both parties. This is due to the Prophet's statement:

«إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ»

*"The business transaction is only by mutual satisfaction."* (Ibn Majah with a *Hasan* chain)

## **The Valid Conditions of the Business Deal**

Making a condition of description in the sale is valid. If the description as per the condition is present then the deal is valid and otherwise it is invalid. For example, if a buyer makes a condition concerning a book that its pages should be yellow or he makes a condition concerning a house that its doors should be of iron.

Likewise, making a condition of a particular benefit is also valid. For example, if a seller of an animal makes a condition that he will ride the animal to such and such place or a seller of a house makes a condition to stay

therein a month. Other examples are a buyer of a garment making a condition that it be stitched or a buyer of firewood making a condition that it be split. This is allowed, as Jabir made a condition that he would ride on the camel that he sold to the Messenger of Allāh ﷺ.

## The Invalid Conditions of the Business Deal

1) Combining two conditions in one sale. For example, a buyer of firewood makes a condition that it should be split and loaded.

This is due to the Prophet's statement:

«لَا يَجُزُّ سَلْفٌ وَبَيْعٌ، وَلَا شَرْطَانِ فِي بَيْعٍ»

*«The condition of a loan combined with a sale is not lawful, nor two conditions relating to one transaction.»* (Abu Dawud and At-Tirmithi, and more than one person has graded it *Sahih*)

2) That a person makes a condition that goes against the principle of selling. For example, a seller of an animal makes a condition that the buyer will not resell it, or that he will not resell it to Zayd, or that he will not give it to 'Umar as a gift, and so forth. He also may not make a condition that the buyer must loan it or that he must sell him something of it. This is due to the Prophet's statement:

«لَا يَجُزُّ سَلْفٌ وَبَيْعٌ، وَلَا شَرْطَانِ فِي بَيْعٍ، وَلَا بَيْعُ مَا لَيْسَ عِنْدَكَ»

*«The condition of a loan combined with a sale is not lawful, nor two conditions relating to one transaction, nor selling what is not in your possession.»* (This Hadith has been previously referenced.)

3) Making an invalid condition with which the contract is still valid, but the condition is nullified. For example, making a condition that the buyer should not suffer a loss during a sale or the seller of a slave stipulating that the right of the slave's inheritance (*Al-Wala'*) belongs to him. In these two cases, imposing such conditions is invalid, while



the deal is correct. This is due to the Prophet's statement:

«مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَإِنْ كَانَ مِائَةَ شَرْطٍ»

*«Whoever makes a condition which is not in Allāh's Book, it is invalid even if there are a hundred conditions.»* (Al-Bukhari and Muslim)

### **The Ruling of Choice (i.e. confirming or canceling) in the Deal**

The option to confirm or cancel the deal is lawful in a number of issues. They are as follows:

1) Both the seller and the buyer have the choice to confirm or cancel the deal as long as they have not separated from the place of the deal. Each of them has the option to continue the transaction or cancel it. This is due to the Prophet's statement:

«الْبَيْعَانِ بِالْخِيَارِ مَا لَمْ يَفْرَقَا، فَإِنْ صَدَقَا وَبَيَّنَّا بُرُوكَ لَهُمَا فِي بَيْعِهِمَا، وَإِنْ كَتَمَا وَكَذَبَا مُحِقَّتْ بَرَكَتُهُ بَيْعِهِمَا»

*«Both parties in a business transaction have the right to accept or reject the deal as long as they have not separated. If they tell the truth and make everything clear to each other, their transaction is blessed. If they conceal anything and lie to each other, the blessing of their transaction will be eliminated.»* (Al-Bukhari and Muslim)

2) If one of the two parties makes a condition for a fixed time to allow the option to accept or reject the deal and they agree to that, then both of them hold the option to accept or reject the deal until the term expires. If the term expires, the transaction continues as valid. This is due to the Prophet's statement:

«الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ»

*«Muslims are bound to their contractual conditions.»* (Abu

Dawud and Al-Hakim and it is *Sahih*)

3) If one of them cheats the other with cruel cheating. This is when the cheating reaches one-third or more (in value). An example would be the seller selling something that is worth ten for fifteen or twenty. In such a case, the buyer has the right to cancel the deal or pay a known market price. This is due to the Prophet's statement to a man who used to be cheated in buying due to his being feeble-minded:

«مَنْ بَايَعْتَ قُلَّ لَا خِلَافَةَ»

«When you make a bargain say: "No deception."» (Al-Bukhari and Muslim)

Whenever it becomes clear that a person has been cheated, he returns to the seller and demands that the excessive amount (price) be returned to him or the deal may be canceled.

4) If the seller swindles in the merchandise by making its beauty visible and concealing its defect, or making its quality apparent and hiding its problems or collecting the milk in the udder of the sheep, then the buyer has the right to cancel or confirm the deal. Allāh's Messenger ﷺ said:

«لَا تُصَرُّوا الْإِبِلَ وَلَا الْغَنَمَ، فَمَنْ ابْتَاعَهَا فَهُوَ بِخَيْرِ النَّظَرَيْنِ بَعْدَ أَنْ يَحْلِبَهَا،  
إِنْ شَاءَ أَمْسَكَ وَإِنْ شَاءَ رَدَّهَا وَصَاعًا مِنْ تَمْرٍ»

«Do not tie up the udders of camels and goats, for he who buys them after that (has been done) has two choices open to him after milking them. If he wishes, he may keep them or he may return them along with one Sa' of dates.» (Al-Bukhari and Muslim)

5) If any deficiency is found in the sold goods that decreases its value, and the buyer was not aware of it, and he was satisfied at the time of bargaining. In this case, the buyer has the right to either confirm the deal or cancel it.

This is due to the Prophet's statement:

«لَا يَحِلُّ لِمُسْلِمٍ بَاعَ مِنْ أَخِيهِ بَيْعًا فِيهِ عَيْبٌ إِلَّا بَيَّنَّهُ لَهُ»

«It is not allowed for a Muslim to sell to his brother some goods which are defective, except that he explains (or reveals) it to him.» (Ahmad and Ibn Majah and it is *Hasan*)

And his statement in the *Sahih*:

«مَنْ غَشَّنَا فَلَيْسَ مِنَّا»

«Whoever cheats us is not one of us.»

6) If the seller and buyer dispute about the amount of the value or the description of the goods, each one of them will swear by oath to the other. Thereafter, both have the right to confirm or cancel the deal. This is due to what has been reported in a *Hadith*:

«إِذَا اخْتَلَفَ الْمُتَبَايعَانِ وَالسُّلْعَةُ قَائِمَةٌ وَلَا بَيِّنَةٌ لِأَحَدِهِمَا تَحَالَفَا»

«When the seller and buyer disagree, and the goods are existing and neither of them have any proof, both of them should swear by an oath.» (The Sunan compilers and Al-Hakim, who graded it *Sahih*)<sup>[1]</sup>

## Explaining Prohibited Business Transactions

The Messenger of Allāh ﷺ forbade certain types of sales, because of what they contained of deceit, leading to people's wealth being fraudulently devoured. Such deception causes

[1] If one of them does have proof for what he claims, then the ruling is according to it, and there is no swearing of oaths and no returning after the agreement is concluded. There is a great difference of opinion concerning this issue and this is the fairest approach. Another problem occurs in the situation if the product is not present, for example if it is used up. In this situation the matter is resolved by using a product that is the same if there is a similar product existing, or a product of the same value if there is a product that has the same value. In some narrations of this *Hadith*, the words 'the goods are existing' are not mentioned.

malice, controversy and quarrels among the Muslims.

Among them are the following:

1) Selling merchandise before possessing it. It is unlawful for the Muslim to buy merchandise and resell it before possessing it from the original seller. The Messenger of Allāh ﷺ said:

«إِذَا اشْتَرَيْتَ شَيْئًا فَلَا تَبِعْهُ حَتَّى تَقْبِضَهُ»

*«If you buy something, do not resell it until you possess it.»*

(Ahmad and At-Tabarani. There is a criticized narrator in its chain but it is acceptable to act upon.)

And his statement:

«مَنْ ابْتَعَ طَعَامًا فَلَا يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ»

*«Whoever purchases food, should not sell it until he takes possession of it.»*

Ibn Abbas said: "I think every sale is like it (i.e. subject to this condition)." (Al-Bukhari)

2) A Muslim trying to make a deal when another Muslim has already negotiated it. It is not permissible for the Muslim that if his Muslim brother buys some merchandise for five, and he says to him, "Return it to its owner and I will buy it for you for four." Similarly, it is not permissible for him to say to the owner of the product, "Cancel the deal and I will buy it from you for six." This is due to the Messenger of Allāh's statement:

«لَا يَبِيعُ بَعْضُكُمْ عَلَى بَيْعِ بَعْضٍ»

*«You should not make sales (deals) against each other.»* (Al-Bukhari and Muslim)

3) Artificial inflation by overbidding. It is not permissible for the Muslim to give something towards the purchase of an item, but he does not really intend to buy it. He only acts as though he wants to buy the merchandise in order to

increase its value and mislead the actual buyer. Likewise, it is not permissible for a seller to say to someone who wants to buy the product, "I purchased it for such and such price," while lying in order to deceive the buyer. It makes no difference whether he has connived this with its real owner or not. Such deal is not permissible. This is due to Ibn 'Umar's statement, "The Messenger of Allāh ﷺ forbade making artificial inflation by overbidding." Also, the Prophet ﷺ said:

«وَلَا تَنَاجُشُوا»

*«And do not make artificial inflation by overbidding.»* (Al-Bukhari and Muslim)

4) Selling of prohibited and impure materials. It is not permissible for a Muslim to sell something forbidden, or any impure object, or anything that leads to what is prohibited. Therefore, it is not lawful to sell wine (intoxicants), swine (pork), pictures, dead animals, idols, and grapes to someone who will produce wine from them. This is due to the Messenger of Allāh's statement:

«إِنَّ اللَّهَ حَرَّمَ بَيْعَ الْخَمْرِ وَالْمَيْتَةِ وَالْخَنَزِيرِ وَالْأَصْنَامِ»

*«Verily, Allāh has prohibited the trade of wine, dead animals, swine and idols.»* (Al-Bukhari and Muslim)

He ﷺ also said:

«لَعَنَ اللَّهُ الْمُصَوِّرِينَ»

*«Allāh cursed the makers of pictures.»* (At-Tabarani in Al-Awsat and Ibn Hajar graded it good in Bulugh-ul-Maram.)

He ﷺ also said:

«مَنْ حَبَسَ الْعِنَبَ أَيَّامَ الْقِطَافِ حَتَّى يَبِيعَهَا مِنْ يَهُودِيٍّ أَوْ نَصْرَانِيٍّ، أَوْ مِمَّنْ يَتَّخِذُهَا خَمْرًا، فَقَدْ تَقَحَّمَ النَّارَ عَلَى بَصِيرَةٍ»

*«Whoever hoards grapes in the vintage season till he sells them to Jews or Christians or to those who will make wine with*

them, has hastily thrown himself into the Hell-fire with clear discernment.» (In the *Sahihain*)

5) Sale of deception. It is not permissible to sell something that contains delusion. Fish that are still in water should not be sold. The wool that is still on the back of sheep should not be sold. The fetus that is still in the womb (of domestic animals) should not be sold. The milk, which is still in the udder, should not be sold. Fruit before it becomes ripe or grains before they harden should not be sold. Any merchandise before seeing it, inspecting it or testing it, if it is readily available, should not be sold. If the merchandise is not available and there is no description of it or knowledge of its kind and quantity, it should not be sold. This is due to the statement of the Messenger of Allāh ﷺ:

«لَا تَشْتَرُوا السَّمَكَ فِي الْمَاءِ، فَإِنَّهُ غَرَرٌ»

«Do not buy fish in the water, for verily it is deceitful (or uncertain).» (Ahmad. There is criticized narrator in its chain, but there are supporting narrations to strengthen it.)

Ibn 'Umar said, "The Messenger of Allāh ﷺ prohibited selling of dates until eatable, or wool that is still on the back of the animal, or milk that is still in the udder, or fat which is still in the milk." (Al-Bayhaqi and Ad-Daraqutni and it is acceptable.)

He (Ibn 'Umar) also said, "The Messenger of Allāh ﷺ prohibited selling fruits before they ripen." And he said, "That is their becoming reddish." He also said, "If Allāh has prevented the fruit (from ripening), then what makes the wealth of your brother lawful for you?" (All of these previous narrations are in Al-Bukhari and Muslim.) Abu Sa'īd Al-Khudri said, "The Messenger of Allāh ﷺ prohibited the types of sales by touching and casting. As for the sales by touching, one person just touches the garment of another by hand at night or daytime without looking it over. As for the sales by casting, a person just throws his

garment while the other person does the same towards the former. Thus the deal is done without looking, testing, and turning the garment over to inspect it.” (Al-Ēukhari and Muslim)

6) Two transactions combined in one deal. It is not lawful for a Muslim to make two deals combined in one bargain. Rather, each trade should be made separately. Otherwise, there will be confusion, which will lead to harming the Muslim or devouring his wealth without right. There are several forms of conducting two transactions combined in one deal. One form is that a person says, “I will sell you this for ten right now, or for fifteen if it is on delayed credit.” Thus, the deal is confirmed, but he has not made clear which of the two types of deals he has made. Another form is that one says, “I will sell you this house for such and such with the condition that you have to sell me so-and-so thing for such and such.” Another form is when a person sells one of two different things for one dinar, and thus the deal is made. However, the buyer is unaware of which one of these two things he has purchased. This is due to what has been reported from the Prophet ﷺ, that he forbade two transactions combined in one deal. (Ahmad and At-Tirmithi, who said it is *Sahih*.)

7) A sale involving a security deposit. It is not permissible for any Muslim to make a sale which involves a security deposit up front. This is due to what has been reported that the Messenger of Allāh ﷺ forbade the type of sale in which a security deposit payment was made. (Malik in *Al-Muwatta'* and others) Malik said in explaining it, “It is that a person buys something, or rents an animal. Then he says, ‘I will pay you one dinar with the condition that if I abandon the merchandise or rent, whatever I have given you (as a security deposit) is yours.’”

8) Selling what one does not possess. It is not permissible for any Muslim to sell something that he does not have or something that he does not own. This is because of the

harm that this will cause the seller and the buyer in a situation in which the purchased merchandise cannot be acquired. Thus, the Messenger of Allāh ﷺ said:

«لَا تَبِعْ مَا لَيْسَ عِنْدَكَ»

«Do not sell that which you do not have.» (The Sunan compilers and it was graded *Sahih* by At-Tirmithi.)

And the Messenger of Allāh ﷺ forbade selling something before possessing it. (Al-Bukhari)

9) Selling a debt with a debt. It is not permissible for any Muslim to sell a debt with a debt, as it carries the same ruling as selling something that does not exist for something that does not exist, and Islam does not allow this. An example of selling a debt for a debt is that a man owes you a kilo of coffee beans purchased on credit, so you sell it (what is owed) to another man for one hundred riyals to be paid later on credit. Another example is that a man owes you a sheep to be given later on credit. Then when the fixed term is over, the seller is unable to give you the sheep. So the man says to you, "Sell it (the sheep) to me for fifty riyals on (another) credit." In this case you would have sold a debt for another debt, and the Messenger of Allāh ﷺ forbade selling a debt for a debt. (Al-Bayhaqi and Al-Hakim and it is *Sahih*)

10) The Sale of Credit. It is not permissible for the Muslim to sell something on credit and then buy it back from the person he sold it to for a lower price than he originally sold it. This is because if a person sells someone something for ten riyals, then he buys it back from him for five riyals, this is similar to a person who gives five riyals on credit for a fixed term for ten riyals. This is an exact case of *Riba An-Nasi'ah* (interest on lent money) which is prohibited according to the Qur'an, Sunnah and the consensus of Muslim scholars. This is due to the Messenger of Allāh's statement:



«إِذَا ضَرَّ النَّاسُ بِالدِّينَارِ وَالذَّرْهَمِ، وَتَبَايَعُوا بِالْعَيْنَةِ، وَاتَّبَعُوا أَذْنَابَ الْبَقَرِ، وَتَرَكُوا الْجِهَادَ فِي سَبِيلِ اللَّهِ أَنْزَلَ اللَّهُ بِهِمْ بَلَاءً فَلَا يَرُفَعُهُ حَتَّى يُرَاجِعُوا دِينَهُمْ»

«When people become stingy with the dinar and the dirham, deal in transactions of Al-'Ainah<sup>[1]</sup>, follow the tails of the cattle, and give up Jihad in the way of Allāh, Allāh will send down on them a trial and He will not remove it until they return to their religion.» (Ahmad and Abu Dawud and it was graded Sahih by Ibn Al-Qattan.)

A woman said to 'A'ishah, 'I sold a slave to Zayd bin Al-Arqam for eight hundred dirhams on credit to be paid later. Then I bought him (the slave) back from him for six hundred dirhams with cash.' 'Aishah said to her, 'What a bad purchase you have made and how evil your sale! Verily his (Zayd's) participation in *Jihad* along with the Prophet ﷺ has become nullified unless he repents.' (Ad-Daraqutni and there is weakness in its chain of narration.)

11) The selling of a city dweller for a rural dweller. If a rural dweller or someone who is a stranger to a land brings some goods (to the city) and he wants to sell them in the market for the current market value, it is not permissible for a city dweller to say to him, "Leave the goods with me and I will sell them for you after one day or more for a higher price than the current one." Meanwhile, the people are in need of those goods. This is due to the Prophet's saying:

«لَا يَبِيعُ حَاضِرٌ لِرَّيْاءٍ، دَعَا النَّاسَ يَرْزُقِي اللَّهُ بَعْضَهُمْ مِنْ بَعْضٍ»

«A city dweller should not sell for a rural dweller. Leave the people alone. For Allāh provides sustenance to some of them through others.» (Al-Bukhari and Muslim)

12) Buying from the caravan. It is not permissible for the Muslim who hears about the coming of some goods to the

[1] A sale of credit under the condition that the seller will buy it back for a lower price.

town to go out to meet the trade caravan at the outskirts of the town in order to buy the goods from them there, and then enter the town selling them as he wishes. This deal involves cheating the owners of the merchandise and harming the people of the town, such as the merchants and others. Thus, the Messenger of Allāh ﷺ said:

«لَا تَلْقُوا الرُّكْبَانَ، وَلَا يَبِيعُ حَاضِرٌ لِّبَادٍ»

*«Do not meet the caravans (outside town), and a city dweller should not sell goods for a rural dweller.»* (Al-Bukhari and Muslim)

13) Selling animals whose udders have been tied up to yield large amounts of milk. It is not permissible for the Muslim to tie up the udders of sheep, cows, or camels. This means that the person gathers their milk in their udders for several days in order to give the impression that they have an abundance of milk in their udders. This causes the people to become interested in buying them and thus he sells them. This is forbidden because it contains fraud and deceit. The Messenger of Allāh ﷺ said:

«لَا تُصَرُّوا الْإِبِلَ وَلَا الْغَنَمَ، فَمَنْ ابْتَاعَهَا فَهُوَ بِخَيْرِ النَّظَرَيْنِ بَعْدَ أَنْ يَحْلِبَهَا، إِنْ رَضِيَهَا أَمْسَكَهَا، وَإِنْ سَخِطَهَا رَدَّهَا وَصَاعًا مِنْ تَمْرٍ»

*«Do not tie up the udders of camels and sheep to yield more milk. Whoever buys them after that (has been done) has two choices after milking them: he may keep them if he is pleased with them, or he may return them along with one Sa' of dates if he is displeased with them.»* (Al-Bukhari and Muslim)

14) Trading after the final Adhan (call to the prayer) for the Jumu'ah (Friday) prayer. It is not permissible for the Muslim to buy or sell anything after the final Adhan for the Friday prayer is called. This is the Adhan that is followed by the Imam ascending the pulpit (to deliver the sermon). This is due to the statement of Allāh the Almighty:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَوَدَّعَ الصَّلَاةُ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ﴾

﴿O you who believe! When the call is proclaimed for the Salah on the day of Friday, come to remembrance of Allāh and leave off business.﴾ (62:9)

15) Trading of *Muzabanah* and *Muhaqalah*. It is not permissible for the Muslim to sell fresh grapes by estimation for raisins by measure, or field crops still in the stalk for grain by measure, or fresh dates still on trees for dried dates by measure. The exception to this is the sale of 'Arya dates by estimation, since the Prophet ﷺ permitted making such sale. The 'Arya sale is when the Muslim gives his brother one or more palm trees whose dried dates do not exceed five *Awsuq* (i.e., 60 *Sa'* or approximately 180 kg). Then the person who gave the trees causes inconvenience to the recipient by frequently visiting the garden to collect his fresh dates. Therefore, in order to avoid such an annoyance, the person to whom the trees were given, buys the dates from the donor by estimating them as dried dates.

The proof that *Muzabanah* is unlawful is the statement of Ibn 'Umar, "The Messenger of Allāh ﷺ forbade the trading of *Muzabanah*, which is the person selling the fruits of his garden, when they are (on) date-palm trees for dried dates by measure. And if they are fresh grapes, it means selling them for raisins (dried grapes) by measure. If they are field crops, it means selling them while still in the stalk for grain by measure. He prohibited all of that." (Al-Bukhari)

The proof that the sale of 'Arya is permissible is the statement of Zayd bin Thabit, "The Prophet ﷺ allowed the owner of the 'Aryyah to sell them (on the trees) by means of estimation." (Al-Bukhari)

16) Trading of *Ath-Thunya*: It is not permissible for a Muslim to sell something excluding some part of it unless what he has excluded is known. For example, if he sells a garden, it is not permissible for him to exclude a palm tree or a tree that is unknown (i.e. unspecified). This is due to the forbidden deceit that such a deal contains. Jabir said,

“The Messenger of Allāh ﷺ forbade *Al-Muhaqalah*, *Al-Muzabanah*, and *Ath-Thunya* trade, unless it is known.” (At-Tirmithi, who graded it *Sahih*)

### **Selling what Produces Fruit**

When someone sells palm trees which are pollinated, and their fruit is apparent, then the fruit is for the seller unless the buyer makes a condition otherwise. The Messenger of Allāh ﷺ said:

«مَنْ بَاعَ نَخْلًا قَدْ أُبْرِثَ فَتَمَرُهَا لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ»

«If someone sells pollinated date-palms, their fruits will be for the seller, unless the buyer stipulates the contrary.» (Al-Bukhari)

## **Ar-Riba (Usury and Interest)**

### **Its Definition**

It is the increase in things from specified wealth. It is of two types: *Riba Fadhl* and *Riba Nasi'ah*.

**Riba Al-Fadhl:** This is selling one type of item for the same type of item that is better in quantity. This is like selling one weight of wheat for one and a quarter weight of wheat, for example. Similarly, selling one *Sa'* of dates for one and a half *Sa'* of dates, or selling one ounce of silver for one ounce and one dirham of silver.

**Riba An-Nasi'ah:** This type of *Riba* has two categories. One is the *Riba* of *Jahiliyah* (Pre-Islamic Period of Ignorance). This is the type of *Riba* that Allāh the Almighty prohibited by saying:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ مَضَاعِفَةً﴾

﴿O you who believe! Eat not Riba doubled and multiplied.﴾

(3:130)

In actuality it is a man owing another man a debt on delayed payment. Then, when its fixed term is due, the lender says to the taker, "You may either pay me back or I will increase the amount of the debt (to give you more time)." So if he does not repay the debt, the lender increases the debt by a percentage of the wealth and he waits for another appointment of time (for him to repay it). This course will continue, until it earns him double compounded interest by passing the fixed term until it is multiplied and so on. Another type of interest of *Jahiliyah* was when someone lends ten dinars for the payment of fifteen dinars on short - or a long-term credit.

The (second category of) *Riba An-Nasi'ah* is selling

something which involves *Riba*, like one of the two currencies, or wheat or barley, or dates for another type of dates. This is, for example, if a man sells a weight of dates for a weight of wheat for a fixed term, or a man sells ten dinars of gold for one hundred and twenty dirhams of silver for a fixed term.

### Its Ruling

*Riba* is forbidden by the statement of Allāh the Almighty:

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

﴿Allāh has permitted trading and forbidden Riba.﴾ (2:275)

And by His statement:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُتَعَفِّفَةً﴾

﴿O you who believe! Eat not Riba doubled and multiplied.﴾  
(3:130)

And the statement of the Messenger ﷺ:

«لَعَنَ اللَّهُ آكِلَ الرِّبَا وَمُوكِلَهُ، وَشَاهِدَيْهِ، وَكَاتِبَهُ»

«Allāh curses the one who accepts Riba (usury and interest), the giver of it, the two witnesses of it, and the one who writes it.» (The Sunan compilers and At-Tirmithi graded it *Sahih*)

And his statement:

«دِرْهَمٌ رِبَاً يَأْكُلُهُ الرَّجُلُ وَهُوَ يَعْلَمُ، أَشَدُّ مِنْ سِتٍّ وَثَلَاثِينَ زِنَةً»

«One dirham of Riba that a man devours, while knowing it is Riba, is more severe (in crime) than thirty-six acts of fornication (or adultery).» (Ahmad with a *Sahih* chain of narration)

And his ﷺ statement:

«الرِّبَا ثَلَاثَةٌ وَسَبْعُونَ بَابًا، أَيْسَرُهَا أَنْ يَتَكَبَّحَ الرَّجُلُ أُمَّهُ، وَإِنَّ أَرْبَى الرِّبَا عِزْضُ الرَّجُلِ الْمُسْلِمِ»

«Riba has seventy-three doors. The least one (in sin) is as that of a man who sleeps with his mother. And worst form of Riba is harming the honor of a Muslim man.» (Al-Hakim, who graded it Sahih)

The Messenger of Allāh ﷺ said:

«اجْتَنُوا السَّبعَ الْمَوْتِياتِ»

«Keep away from the seven fatalities.»

It was asked, "What are they, O Messenger of Allāh?" He replied:

«الشُّرْكُ بِاللَّهِ، وَالسَّحَرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ الرِّبَا، وَأَكْلُ مَالِ الْيَتِيمِ، وَالتَّوَلَّى يَوْمَ الرَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ الْغَافِلَاتِ»

«Associating others with Allāh, magic, taking a life Allāh has made sacred - except with a just cause, consuming the wealth of Ar-Riba, consuming the wealth of the orphan, fleeing from the battlefield, and accusing innocent chaste believing women.»

(Al-Bukhari and Muslim)

### The Wisdom Behind its Prohibition

Among the obvious reasons behind the forbiddance of Riba, in addition to the general wisdom that is present in all of the Islamically legislated responsibilities, which is to test the faith of the servant in both action and abandoning action, are the following:

- 1) To safeguard the wealth of the Muslim from being devoured through false sources.
- 2) Guiding the Muslim to invest his wealth in the appropriate ways of earning that are noble and free from any fraud or cheating. It will also keep him away from everything that causes trouble and hatred between the Muslims. For example, agriculture, industry, and pure and valid trading.

3) Closing the ways that lead the Muslim to enmity of his brother and troubling him, as well as hatred and dislike of him.

4) Keeping the Muslim away from whatever leads him to his destruction, as the one who devours *Riba* is a transgressor and oppressor, whose final end will be of evil consequence. Allāh said:

﴿يَأْتِيهَا النَّاسُ إِنَّمَا بِغَيْرِكُمْ عَلَى أَنْفُسِكُمْ﴾

«O mankind! Your rebellion (disobedience to Allāh) is only against yourselves.» (10:23)

The Messenger of Allāh ﷺ said:

«اتَّقُوا الظُّلْمَ، فَإِنَّ الظُّلْمَ ظُلُمَاتٌ يَوْمَ الْقِيَامَةِ، وَاتَّقُوا الشُّحَّ، فَإِنَّهُ أَهْلَكَ مَنْ كَانَ قَبْلَكُمْ حَمَلَهُمْ عَلَى أَنْ سَفَكُوا دِمَاءَهُمْ، وَاسْتَحَلُّوا مَحَارِمَهُمْ»

«Beware of oppression, for oppression will be darkness on the Day of Resurrection. Beware of stinginess, for it destroyed those who were before you. It incited them to shed blood and treat the unlawful as lawful.» (Muslim)

5) Creating the opportunities of righteousness for the Muslim so that he may prepare for his Hereafter. Therefore, he gives a loan to his Muslim brother without any return on his loan and gives him respite for paying back his debt. He waits for his brother to be in easier circumstances and he eases things for him and has mercy upon him, seeking the Pleasure of Allāh. This helps spread love between the Muslims and creates the spirit of brotherhood and sincerity among them.

### Its Regulations

1) There are six basic items that involve *Riba*: gold, silver, wheat, barley, dates, and salt. The Messenger of Allāh ﷺ said:

«الدَّهَبُ بِالذَّهَبِ، وَالنِّصَّةُ بِالنِّصَّةِ، وَالْبُرُّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالتَّمْرُ



بِالتَّمْرِ، وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ، سَوَاءٌ بِسَوَاءٍ، يَدًا بِيَدٍ، فَإِذَا اخْتَلَفَتْ هَذِهِ  
الْأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ، إِذَا كَانَ يَدًا بِيَدٍ»

«Gold is to be paid for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, same quantity for same quantity and equal for equal, payment being made on the same spot. If these classes differ, sell then as you wish if payment is made on the spot.» (Muslim)

The renowned scholars among the Companions, their successors and the Imams have made an analogy from these six basic items with anything that agrees with them in meaning and cause. That is everything by measure or weight or that is stored as food. These are like the rest of the grains, oils, honey and meats. Sa'id bin Al-Musayyab said, "There is no *Riba* except in what is measured or weighed, from that which is eaten or drank."

2) *Ar-Riba* in these items may occur in either of three ways:

The First: One sells one kind for the same kind, getting a superior quality of it for inferior quality of the same kind. For example, selling gold for gold, wheat for wheat, or dates for dates. This is due to what Al-Bukhari and Muslim reported that Bilal, may Allāh be pleased with him, brought some dates called *Barni* to the Prophet ﷺ and the Prophet ﷺ asked him:

«مِنْ أَيْنَ هَذَا يَا بِلَالُ؟»

«Where did you get this from, O Bilal?»

He replied, "We had some dates of inferior quality, so I sold two *Sa'* of it for one *Sa'* (of superior quality of dates) so that it may be given to the Prophet ﷺ for food."

Thereupon the Prophet ﷺ said:

«أَوْه! عَيْنُ الرُّبَا، عَيْنُ الرُّبَا، لَا تَفْعَلْ، وَلَكِنْ إِنْ أَرَدْتَ أَنْ تَشْتَرِيَ فَبِعِ التَّمْرَ  
بِشَيْءٍ آخَرَ ثُمَّ اشْتَرِ بِهِ»

«O! (This is) the essence of Riba, (this is) the essence of Riba, so do not do so. However, if you want to buy (a superior quality of dates), then sell (the inferior quality of dates) in another transaction and buy (the superior quality of dates) with its price.» (Al-Bukhari and Muslim)

The Second: Selling one kind of item for a different kind, for example, selling gold for silver or wheat for dates, when one item is present and the other is absent. This is due to the Messenger of Allāh's statement:

«لَا تَبِيعُوا مِنْهَا غَايِبًا بِنَاجِزٍ»

«Do not sell from it (gold or silver) what is not present at the moment of exchange for (gold or silver) what is present.»

And his statement:

«يَبِيعُوا الذَّهَبَ بِالْفِضَّةِ يَدًا بِيدٍ»

«Sell gold for silver if payment is made on the spot.»

And his saying:

«الذَّهَبُ بِالزَّوْقِ رَبًّا إِلَّا هَاءَ وَهَاءَ»

«Selling of gold for silver is Riba unless it is from hand to hand, present at the time of the sale.» (Al-Bukhari and Muslim)

The Third: Selling one kind for the same kind in equal amounts, but one of them is absent and financed on credit. For example, selling gold for gold or dates for dates, equal in amount and in kind, although one kind is absent.

This is due to the Prophet's statement:

«الْبُرُّ بِالْبُرِّ رَبًّا إِلَّا هَاءَ وَهَاءَ»

«Selling of wheat for wheat is Riba unless it is from hand to hand, present at the time of sale.» (Al-Bukhari and Muslim)

3) There is no Riba with cash payment and differing kinds of items:

There is no *Riba* involved in a trade in which the price and the object of value differ, except if one of them is on credit and it is not of gold or silver. Therefore, it is permissible to sell gold for silver, a superior quality of it for an inferior quality. It is also permissible to sell wheat for dates or salt for barley, a superior quality of it for an inferior quality. It should be done hand to hand, meaning there is no delay in either of them (i.e. payment or receipt of the purchased merchandise).<sup>[1]</sup> This is due to the Prophet's statement:

«إِذَا اخْتَلَفَتْ هَذِهِ الْأَشْيَاءُ فَبِيعُوا كَيْفَ شِئْتُمْ، إِذَا كَانَ يَدًا يَدًا»

*«If these items differ, then sell as you wish if it is from hand to hand (i.e. the payment is made on the spot).»* (Muslim)

Similarly, there is no *Riba* in selling these items for cash payment, whether present or absent, no matter the value or if the merchandise is absent. The Messenger of Allāh ﷺ bought a camel from Jabir bin 'Abdullah, may Allāh be pleased with him, on a journey. However, he did pay its price until after reaching Al-Madinah. The Messenger of Allāh ﷺ has also permitted advance payment in his statement:

«مَنْ أَسْلَفَ فِي شَيْءٍ فَلَيْسَ لَهُ فِي كَيْلٍ مَعْلُومٍ، وَوَزَنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ»

*«Whoever pays in advance for anything must do so for a*

[1] The people of knowledge differ concerning the ruling of selling animals for animals on delayed payment. This is due to contradiction of the evidences. It has been reported that the Prophet ﷺ commanded 'Abdullah bin 'Umar, may Allāh be pleased with him, to buy one camel for two camels to be given later. That was due to a need to do so. Likewise, it is related that he ﷺ prohibited selling animals for delayed payment. Allāh knows best, but it seems that what is closest to the truth is that selling animals for animals on delayed payment is prohibited if there is no pressing necessity that calls for such a transaction. However, if the animals are present at the time of the transaction, then it is permissible to trade them, whether one type is superior to the other or not, as has been mentioned in the *Sahih*.

*specific measurement and a specific weight at a specified time.»*

(Al-Bukhari and Muslim)

This is the case when the cash payment is made in advance and the merchandise is given after a long period of time.

#### 4. An explanation of the types of items that may involve *Riba*

The items that involve *Riba* are of different types. According to the majority of the Companions and Imams, such items are as follows:

Gold, silver, wheat, barley, all types of dates are considered one category, legumes are of different categories, hence the bean is a category, the chickpea is a category, rice is a category, and corn is a category. All types of oils are considered one category, honey is a category, and all meats are of differing categories. Thus, the meat of camel is a category, the meat of cows is a category, the meat of sheep is a category, the meat of all birds is one category, and all different kinds of fish make up one category.

#### 5. Foods that are free from any *Riba*

*Riba* does not effect fruits and vegetables because on the one hand they are not stored, and on the other hand, from the ancient times, they were not measured or weighed. Above all, such were not considered part of basic foodstuffs like grains and meat, concerning which there are clear authentic texts narrated from the Prophet ﷺ.

### **Important Notes:**

#### **1) Banks**

The majority of the current banks that exist in the Islamic lands deal with *Riba*. Rather they are established purely upon the foundations of *Riba*. Therefore, it is not permissible to deal with such banks except in the case of necessity, for instance, transferring funds from one country to another. Due to this fact, it is incumbent upon the

righteous Muslim brethren to establish purely Islamic banking systems that are free from any usurious dealings and interest based transactions.

Here is an outline to establish such a proposed Islamic banking system. Muslim brothers of a country should assemble and agree to establish a house called 'community treasury' (for deposit and distribution of funds). They should assign a person from among them who is an experienced guardian to supervise its administration and run its activities.

The responsibility of this treasury should be limited to the following:

i) Receive the deposits (preserve the trusts of the brothers) free of cost.

ii) Loan facilities: Give the Muslim brothers loans according to their incomes and revenues against no benefit (i.e. interest).

iii) Collaboration in the fields of agriculture, commerce, construction and industry. The treasury should invest shares in every field that is capable of earning profits and gain for the treasury.

iv) Help in transferring the currency of the brothers from one country to another free of cost, if the treasury has any branch existing in the land in which the money is to be received.

v) Make account clearance from the treasury at the end of every year and distribute the profits to the shareholders, according to their number of shares in the treasury.

## **2) Insurance**

There is no harm if people of a land from the righteous Muslim brothers form a savings box in which they all have invested shares according to their monthly incomes or according to what they agree to. Each shareholder would participate in it with a specific share in which all are equal.

This special fund would be exclusively for subscribers only. In case anyone of them has suffered any natural accidents such as fire, or stolen property, or physical injury, an amount should be granted to him in order to lighten his difficulty. The following matters should be considered:

- 1) The shareholder should intend the Face of Allāh when he subscribes in order to obtain the reward from Allāh.
- 2) Limiting the amounts that are granted to such victims, just as the shares of the shareholders are limited so that it (the insurance) will be established upon complete equality.
- 3) There is no objection to increasing the assets of the fund by trading, building contracting and permissible industrial activities.

## Currency Exchange

### Its Definition

Currency exchange is selling of one currency for another, for example, the selling of dinars of gold for dinars of silver.

### Its Ruling

Currency exchange is permissible, because it is a part of trading, which is allowed in the Qur'an and the Sunnah. Allāh said:

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ﴾

﴿Allāh has permitted trading.﴾ (2:275)

The Messenger of Allāh ﷺ said:

«يَبِعُوا الذَّهَبَ بِالْفِضَّةِ كَيْفَ شِئْتُمْ يَدًا بِيدٍ»

«Sell gold for silver however you wish if it is hand to hand (i.e. if payment is made on the spot).»

### Its Wisdom

The wisdom behind allowing the exchange of currency is to grant ease to the Muslim in transferring his currency to another currency, which he is in need of.

### Its Conditions

The condition for allowing the currency exchange is the receipt of the currency on the spot, which means hand to hand. This is due to the Messenger of Allāh's statement:

«يَبِعُوا الذَّهَبَ بِالْفِضَّةِ كَيْفَ شِئْتُمْ يَدًا بِيدٍ»

«Sell gold for silver however you wish if it is hand to hand (i.e. if payment is made on the spot).»

And the statement of 'Umar, may Allāh be pleased with him, "No, by Allāh! Do not separate from him until you take (the price) from him." The Messenger of Allāh ﷺ said:

«الذَّهَبُ بِالْوَرِقِ رِبَاً إِلَّا هَاءَ وَهَاءَ»

*«The sale of gold for silver is Riba, unless it is from hand to hand (i.e. payment is made on the spot).»*

'Umar said this to Talhah bin 'Ubaydullah when Malik bin 'Aws sought to make an exchange with him. So he (Malik) took the dinars and said to him, "Wait until my treasurer comes back from the forest." He meant that at that time he will pay him the dirhams for the dinars he took. (Al-Bukhari)

### Its Regulations

There are certain rules for currency exchange. They are as follows:

1. It is permissible to exchange gold for gold and silver for silver as long as they are both equal in measurement, whereas neither of them should be more than the other. This is due to the statement of the Messenger of Allāh ﷺ:

«لَا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ إِلَّا مِثْلًا بِمِثْلٍ، وَلَا تُشِفُّوا بَعْضَهَا عَلَى بَعْضٍ، وَلَا تَبِيعُوا الْوَرِقَ بِالْوَرِقِ إِلَّا مِثْلًا بِمِثْلٍ، وَلَا تُشِفُّوا بَعْضَهَا عَلَى بَعْضٍ، وَلَا تَبِيعُوا مِنْهَا غَائِبًا بِنَاجِزٍ»

*«Do not sell gold for gold unless equivalent in weight. And do not sell fewer amounts for greater amounts or vice versa. And do not sell silver for silver unless equivalent in weight. And do not sell fewer amounts for greater amount or vice versa. And do not sell gold or silver that is not present (at the moment of exchange) for gold or silver that is present.»* (Al-Bukhari and Muslim)

2. The exchange should take place on the spot. This is due to the statement of the Messenger of Allāh ﷺ:



«الذَّهَبُ بِالذَّهَبِ رِبَاٌ إِلَّا هَاءَ وَهَاءَ، وَالْفِضَّةُ بِالْفِضَّةِ رِبَاٌ إِلَّا هَاءَ وَهَاءَ»

«The sale of gold for gold is Riba except if it is from hand to hand, and the sale of silver for silver is Riba except if it is from hand to hand.» (Al-Bukhari and Muslim)

3. It is permissible to trade a variation of quality with different types of items. For example, selling gold for silver if the deal takes place on the spot. This is due to the statement of the Messenger of Allāh ﷺ:

«إِذَا اخْتَلَفَتْ هَذِهِ الْأَشْيَاءُ فَبِيعُوا كَيْفَ شِئْتُمْ، إِذَا كَانَ يَدًا بِيَدٍ»

«If these items differ, then sell as you wish if it is from hand to hand.» (Al-Bukhari Muslim)

4. If both parties depart before the receipt of their payment, then the exchange is invalid. This is due to the statement of the Messenger of Allāh ﷺ:

«إِلَّا هَاءَ وَهَاءَ»

«Unless it is from hand to hand.» (Al-Bukhari and Muslim)

And his ﷺ statement:

«إِذَا كَانَ يَدًا بِيَدٍ»

«If it is from hand to hand.» (Al-Bukhari and Muslim)

## Advance Payment

### Its Definition

A sale with advance payment (*As-Salam* or *As-Salaḥ*) is the sale of specified merchandise that is guaranteed (i.e. it will be given later). This is when someone buys a specific thing with a known description, such as food, animals or otherwise, for a fixed term. He pays the price in advance and will wait for the specified delivery time to receive the goods. If the fixed time comes, then the seller will deliver him the prescribed goods.

### Its Ruling

The sale with the advance payment is permissible, since it is a type of trade and trading is allowed. It is also allowed due to the statement of the Messenger of Allāh ﷺ:

«مَنْ أَسْلَفَ فِي شَيْءٍ فَلَيْسَ لَهُ فِي كَيْلٍ مَعْلُومٍ، وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ»

*«Those who pay in advance for anything must do so for a specified measurement, a specified weight and for a specified time.»* (Al-Bukhari and Muslim)

Ibn 'Abbas, may Allāh be pleased with him, said, "When the Messenger of Allāh ﷺ came to Al-Madinah, they were paying one, two, and three years in advance for fruits." (Al-Bukhari and Muslim)

### Its Conditions

Selling with advance payment is valid under the following conditions:

1. The price should be gold, silver, or any currency that stands as a substitute for them. This will prevent dealings of usury.

2. The seller should be specific about the description of the merchandise. He should mention its kind, type, and amount. This will prevent any dispute, which will result in hatred and enmity between a Muslim and his brother.
3. The term should be fixed and known, and for a long term, for example, half a month, or more.
4. The price should be paid on the spot so that the deal will not involve selling a debt for a debt, which is strictly prohibited.

The basis of these conditions is the saying of the Prophet ﷺ:

«مَنْ أَشْلَفَ فِي شَيْءٍ فَلَيْسَ لِي فِي كَيْلٍ مَعْلُومٍ، وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ»

*«Those who pay in advance for anything must do so for a specific item, a specific weight and for a specific time.»* (Al-Bukhari and Muslim)

### **Its Regulations**

- 1) Credit shall be within a period in which price fluctuation is possible. For example, one month, etc. This is because a sale on advance payment for short term has the same ruling as trading, and seeing the merchandise and its verification are both conditions of sale.
- 2) The credit term should be for a period in which the sold merchandise is likely to be readily available. In other words, it is invalid to deliver ripe dates in the spring season or grapes in the winter season, because such a situation will create discord among the Muslims.
- 3) If the specified delivery point (place) of merchandise has not been mentioned in the contract, then the delivery of it should take place at the same place where the contract is finalized. However, if a particular delivery place is specified in the contract, then implementing such term is incumbent. Wherever both parties agree to deliver the merchandise, this will be the place of delivery, as the Muslims are bound to the fulfillment of their commitments.

## **Textual Format for the Written Sales Agreement**

After mentioning Allāh's Noble Name, the person says:

"Thereafter: Verily so-and-so person has purchased for himself from so-and-so person, while both parties are healthy, of sound mind and sane, and are legally allowed to handle their affairs. He bought from him by his own will the whole building, which is situated in so-and-so city or village, including the land and upper and lower levels of the building. The specification of the building is very clear as witnessed thereon. Both parties involved in the selling and buying, testify that such and such portions are inclusive (described with complete specification)."

The boundaries of the building should be specific. For example, east of it is the house of so-and-so at such and such place, who is known as so-and-so. Similarly west of it, north and south should be specified. All of its utilities and accessories, roads, upper and lower areas, stones and woods, windows and doors, and water drainage systems should be clear. Likewise, all of its interior and exterior benefits should be specified.

"This is a purely legal purchase that is free from any exemption and any conditions that invalidate the deal. This deal is concluded for the price of such and such amount. The above-mentioned buyer has paid the above-mentioned seller the full payments that were agreed upon as mentioned above. Thereupon, he received the above payment as per legal receipt. The seller has delivered the complete building to the buyer with its full amenities as specified above. The buyer has received the said building from the seller in a legal manner, according to the existing legal procedure. Both parties have concluded this deal voluntarily with free will, and thus, they have both endorsed the above agreement."

They both departed after two witnesses who know them witnessed this agreement, and they are so-and-so, and so-

and-so.

“This agreement has been concluded on such and such date.”

### **Textual Format for a Written Sale with Advance Payment**

After praising Allāh the Almighty:

“So-and-so has agreed that he has received and is in possession of such and such amount from so-and-so. This is an advance payment sale for such and such goods,” for example, “wheat (and he mentions the kind). This is according to the measurement of such and such city. This will be delivered after exactly two months from the date of agreement, and carried to the such and such place. In addition, it is agreed that he (the seller) is able to execute this agreement and he has taken the capital money of this legal advanced payment at the time of the contractual agreement (i.e. cash payment), and its price is such and such amount. This agreement has been concluded on such and such date.”

## **Ash-Shuf'ah (Preemption)**

### **Its Definition**

*Ash-Shuf'ah* refers to a business partner taking the share of his counterpart that he has sold to another for the same price (i.e. preemption).

### **Its Regulations**

1. It is a confirmed act in the *Shari'ah*. Preemption is a confirmed legal transaction as the Messenger of Allāh ﷺ ruled according to it. It was reported in the *Sahih* on the authority of Jabir bin 'Abdullah, may Allāh be pleased with him, who said, "The Messenger of Allāh ﷺ ruled according to *Ash-Shuf'ah* (preemption) in everything that was divisible. But if the boundaries were fixed and the roads were designated, there is no *Shuf'ah* (preemption)." (Al-Bukhari and Muslim)

2. Preemption is not valid except in divisible things. If it is not divisible, such as bathrooms and the narrow floor (of a building), then there is no preemption. This is due to the statement of the Messenger of Allāh ﷺ:

«فِيمَا يَنْقَسِمُ»

«*Ash-Shuf'ah* (preemption) is valid in things that are divisible.»

3. Preemption is not valid in divisible things, whose boundaries are fixed and whose roads have been designated. The Messenger of Allāh ﷺ said:

«إِذَا وَقَعَتِ الْحُدُودُ وَصُرِفَتِ الطُّرُقُ فَلَا شُفْعَةَ»

«If the boundaries are fixed and roads are designated, then there is no *Shuf'ah* (preemption).»

This is also the case, because after the division (of boundaries and roads) the partner becomes a neighbor, and there is no preemption for the neighbor according to the correct opinion.

4. There is no right of preemption on movable possessions, such as garments, animals, etc. Rather, preemption is allowed on immovable properties of a land and the amenities therein, like buildings and landscaping. This is because there is no conceivable harm in the cases of things other than land and what is connected to it, so the right of preemption is not applicable.

5. The right of preemption will be lost by his (the partner's) presence at the deal, or his knowledge of the deal if he did not demand the right of preemption until expiration of such period. This is based upon the *Hadith*:

«الشُّفْعَةُ لِمَنْ وَاتَّبَهَا»

«The right of preemption is only for he who claims promptly.»

(‘Abdur-Razzaq recorded it as a statement of Shurayh only.)

And the *Hadith*:

«الشُّفْعَةُ كَحَلِّ الْعَقَالِ»

«The right of preemption is like untying a fetter (of a camel).»

(Ibn Majah and it contains weakness)

Except in the case of his absence, in which case he has right to demand the preemption even if his absence took many years.

6. The right of preemption will be lost if the buyer grants what he bought as an endowment or gives it as a gift or in charity. This is because approving the right of preemption in this case means the nullification of these acts of drawing nearer to Allāh. Supporting righteous deeds is better than approving the right of preemption, since the latter is meant only to remove speculative harms.

7. The buyer has the right for yield and development of it. Therefore, if he erects a building, or plants, the preemptor may own it for its value or he can remove it by paying a fine for its damage. This is because it is neither harmful to one's self nor others.

8. The preemption must be agreed to with the buyer. While the purchase must be agreed to by the seller. Therefore, the preemptor will make a demand to the buyer, while the buyer refers to the seller concerning every matter or dispute raised on the properties that are liable to preemption.

9. The right of preemption cannot be sold or given as a gift, because selling or giving it as a gift is contrary to the very purpose for which the right of preemption has been made legal. The main object of the right of preemption is to lift the harm that is caused to the partner.



## ***Al-Iqalah* (Cancellation of the Sale)**

### **Its Definition**

*Al-Iqalah* is the cancelation of the sale, abandoning it, returning the price to its owner and the merchandise to its seller. This is applied in case both or one of the two parties is remorseful.

### **Its Ruling**

Canceling the sale and accepting the return of merchandise is a recommended act, when either of the parties requests to do so. This is due to the statement of the Messenger of Allāh ﷺ:

«مَنْ أَقَالَ مُسْلِمًا يَبْتَئُهُ أَقَالَ اللَّهَ عُرْتَهُ»

*«Whoever accepts the return of what he sold to a Muslim, Allāh will forgive his fault.»* (Abu Dawud, Ibn Majah and Al-Hakim, who graded it *Sahih*)

And his ﷺ statement,

«مَنْ أَقَالَ نَادِمًا أَقَالَ اللَّهَ يَوْمَ الْقِيَامَةِ»

*«Whoever accepts the return of what he sold to someone who regretted the purchase, Allāh will forgive his fault.»* (Al-Bayhaqi with a *Sahih* chain of narration.)

### **Its Regulations**

The following are the laws related to the canceling of the sale and accepting back the merchandise:

1) There is a difference of opinion as to whether accepting the return of merchandise is a cancelation of the former sale or it is a new sale. Ahmad, Ash-Shafi'i and Abu Hanifah are the supporters of the first view, while Malik

holds the latter view.

2) Canceling the sale and accepting back the merchandise is permissible in sound and undamaged portions of merchandise when other parts of it are damaged.

3) It is not permissible to increase or decrease the price in canceling the sale and accepting back the merchandise. Such a deal would not be considered *Iqalah*, but rather, it would be considered as a new sale in which all regulations of trading are applicable. The right of preemption would be considered, making a condition of possession concerning foods, and other things that are from the manner of selling and other transactions.

## General Contracts

### The Company (Partnership)

#### Its Legality

The company or partnership is legislated. This is due to the statement of Allāh:

﴿فَهُمْ شُرَكَاءُ فِي الثُّلُثِ﴾

﴿They share in a third.﴾ (4:12)

And His statement:

﴿وَإِنَّ كَثِيرًا مِّنَ الظَّالِمِ لِيَنتَهِى بَعْضُهُمْ عَلَى بَعْضٍ﴾

﴿And verily, many partners oppress one another.﴾ (38:24)

The word *Khulata'* in this verse means partners (*Shuraka*).

Also, the Messenger of Allāh ﷺ said:

«أَنَا ثَالِثُ الشَّرِيكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ»

«Allāh the Most High said, 'I am the third (partner) of two partners (i.e. My help will encompass them always) as long as one of them does not cheat his companion.'»<sup>[1]</sup>

And he ﷺ said:

«يَدُ اللَّهِ عَلَى الشَّرِيكَيْنِ مَا لَمْ يَتَخَاوَنَا»

«Allāh's Hand is over both partners as long as they do not

<sup>[1]</sup> Abu Dawud recorded it and he was silent about it. Ibn Qattan mentioned that it has some deficiency and Al-Hakim graded it authentic. The rest of its wording states, "But when he cheats, I leave from among them." This means that He removes the blessing from their wealth.

*cheat one another.*<sup>[1]</sup>

### **Its Definition**

Partnership refers to two or more people sharing in an amount of wealth that they have a right to, whether through inheritance or similar sources. It also may be wealth that they have collected between themselves through installments in order to make business investments with it by trading, industry or agriculture.

There are different types of partnership:

### **'Profit-and-loss share' Partnership**

This is when two or more persons are partners, whose dealing is permissible legally. They collect a fixed amount, dividing it by fixed installments or shares. They work together for its development. The profit and loss will be according to their shares in the capital. Every partner has the right to deal on behalf of himself and be the power of attorney on another partner's behalf. Therefore, he can sell, buy, receive and pay. He can demand debts to be paid back, deduct, and return goods if defective. In brief, he can do whatever he deems beneficial to the well being of the partnership.

### **Conditions for the validity of 'Profit-and-loss share' Partnership:**

- 1) Partnership should be between two Muslims. A non-Muslim partner may deal with usury, or add to the capital money with forbidden money. If the Muslim deals the selling and buying, there is no harm in non-Muslim partnership. Because, the fear of forbidden shares being mixed with the capital amount is unlikely.
- 2) The capital amount of the partnership must be fixed as

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[1] Ad-Daraqutni recorded it and Al-Munthiri was silent about it. Its actual wording states, "As long as one of them does not deceive his partner."

well as the shares of every partner. The profit and loss should be on the fixed capital amount and shares. Meanwhile, unknown capital amount or shares of partners will lead to devouring others' property illegally, which is a prohibited act. Allāh says:

﴿وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ﴾

﴿And eat up not one another's property unjustly.﴾ (2:188)

3) The profit should be known and distributed among the partners, according to their shares. Therefore, it is not permissible to say to one of the partners that he will get his profit from the rams, and the other from the flax and linen, and so on. This involves fraud, which is forbidden.

4) The capital amount should be in cash. If anyone presents the merchandise being his share, he can enter the partnership, and his merchandise should be evaluated according to the current market price. Otherwise, the merchandise stands with its value unknown. Moreover, dealing with the unknown is a prohibited act. It will cause the loss of others' rights and the consumption of unlawful property.

5) Every partner will work according to his share, like matters of profit and loss. For example, if his share is one fourth (1/4), he will work one day out of four days, and so on. If they hire an employee, then his wages will be from the capital amount of each partner according to his share.

6) If one of the partners dies or becomes insane, the partnership will be invalid. The heirs of the deceased or the guardians of the insane can reinstate it with the same terms and conditions as earlier or they can dissolve it if they like.

### **Corporal (Working) Partnership**

This refers to two or more persons sharing whatever they earn by their works. For example, they share in making a

certain product, or tailoring, or washing clothing, etc. Whatever income they receive from this, would be divided between both equally or according to what they have agreed to.

The basis of permissibility of the corporal (working) partnership is the *Hadith* recorded by Abu Dawud. 'Abdullah, Sa'd and 'Ammar made a partnership on the day of Badr concerning what they would get from the wealth of the polytheists. Although 'Ammar and 'Abdullah did not get anything, Sa'd got two prisoners of war. Thus, the Prophet ﷺ made them share in partial ownership of the two prisoners. This occurred before the legislation concerning the division of war booty. (This *Hadith* is authentic and Ahmad, Malik and Abu Hanifah all acted according to it.)

**The Laws of this Corporal (Working) Partnership are as Follows:**

- 1) Both of them can demand the wages and receive them from the employer.
- 2) If one of them becomes sick or absent due to an excused reason, the earning of the other should be divided between both partners.
- 3) If the absence of anyone of them is too long or his sick leave delayed for a long period of time, the healthy (present) partner can co-opt a new employee in his place. His wages should be deducted from the share of the sick or absent partner.
- 4) If anyone of the partners excuses himself from continuing his work, the other can abrogate the partnership deal.

**Honoring Partnership**

Honoring partnership refers to two or more partners sharing in buying and they resell on their own. Whatever they earn from profit or lose, they share equally in it.

## Negotiable Partnership

This type is more comprehensive than the types of profit-and-loss share, honoring, and corporal (working), as it comprises these as well as speculative partnership. Negotiable partnership refers to each partner authorizing the other to deal freely, both financially and personally in every aspect of the partnership. Both are free to sell, buy, speculate, authorize, take legal action, pawn, and to travel with the property. The profit should be distributed among them according to their mutual agreement. The loss should be according to each partner's financial contribution.

## Speculative Partnership (*Mudaribat*)

### Its Definition

The speculative partnership refers to one person giving a certain fixed amount to another person in order to trade with it. The profit of it would be distributed between them both according to what they have agreed upon. However, if any loss occurs, it will be born only by the investor of the capital money. As for the employee, it is enough for him to lose his effort and striving, so why should another loss be imposed upon him?

### Its Permissibility

The speculative partnership is permissible according to the consensus of the Companions, and the Imams.<sup>[1]</sup> This

[1] From this is what Malik recorded in *Al-Muwatta'* that 'Abdullah and 'Ubaydullah, the two sons of 'Umar bin Al-Khattab, passed by Abu Musa Al-Ash'ari in Al-Basrah. So he gave them some wealth to take to 'Umar. Then he encouraged them to take some merchandise with it that they could sell, and then when they sold it, they could pay the capital sum of the money to 'Umar. Thus, they did so. However, 'Umar forbade them from keeping the profit. So 'Ubaydullah said to him, "Couldn't you make this a speculative deal, since he (Abu Musa) said, 'If this wealth decreases or is used up in loss, then we are responsible for that.'" So 'Umar took the

practice was implemented in the lifetime of the Messenger of Allāh ﷺ and he approved of it.

### **Its Regulations**

The following are the rules of the speculative partnership:

(1) This partnership should be between the Muslims who are allowed to deal. There is nothing wrong with this partnership being between a Muslim and a disbeliever, as long as the capital money is invested by the disbeliever and the work is done by Muslim. The reason is that it is not feared that the Muslim will deal in interest or forbidden wealth.

(2) The capital wealth should be a fixed amount.

(3) The worker's share of the profit should be specified. If the worker's share is not specified, he gets a wage for his work and the total profit will be for the owner of the capital amount. However, if they say, "We will share the profit between us," then the profit will be divided in half between them.

(4) If they dispute regarding any term of the profit, for example, whether the worker gets a fourth or a half of the profit, the claim of the owner of the capital is accepted after his swearing an oath.

(5) It is not right for the worker to make another speculative partner with the wealth of another person when it is harmful to the wealth of the first partner. However, it is allowed for the worker to do so if his first partner gives him permission to do that. This is because it is forbidden to cause harm between the Muslims.

(6) The profit should not be distributed as long as the contract is valid, unless both parties agree to divide the profit.

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capital sum of money and divided the profit in half, giving them each a half of the remaining profit. Thus, he made it a speculative deal.



(7) If the capital investment causes any loss, then it should be covered from the profit. Therefore, the employee will not have any right to the profit unless the damage and loss of the capital is covered. This is applicable as long as the profit has not been divided. For example, in the case of both parties making a deal with sheep and receiving profit from it, then they invested it again in trading grains or flax. If they lose the business even from their capital money, they will share the loss from the current capital. The employee should not adjust the current loss from the profit of the former deal.

(8) If the speculative partnership is abrogated and some of the merchandise left, or some debt with someone, the owner of the capital can demand that the existing property be sold to make cash instead or to return the debt. The employee must act according to what the owner instructs.

(9) The claim of the worker should be accepted about the damage or loss of the property if there is not any evidence established against his claim. If he claims the damage of the property and produces the evidences to prove it, his claim will be accepted after his swearing.

## ***Musaqah***

### **Its Definition**

*Musaqah* is giving palm trees, other trees, or both to one who will take care of irrigating them and the rest of their required services. This will be for a fixed portion of the fruits from the trees.

### **It Ruling**

*Musaqah* is permissible. The basis of its permissibility is the practice of the Prophet ﷺ and his four rightly-guided caliphs after him. Al-Bukhari recorded from Ibn 'Umar that the Prophet ﷺ dealt with the people of Khaybar by (stipulating that they give to the Muslim authority) half of

what it (the land of Khaybar) produced of vegetation and dates. After him, Abu Bakr, 'Umar, 'Uthman and 'Ali followed this same method of dealing.

### **Its Regulations**

The regulations for *Musaqah* are as follows:

(1) The palm trees or trees should be known (i.e. specified) upon concluding the contract. Therefore, the *Musaqah* contract will not be permissible on an unknown (i.e. unspecified) crop due to fear of any fraud, which is forbidden.

(2) The portion of the worker should be fixed and specific, like one-fourth or one-fifth, for example. Such known division should be applicable to all palm trees or trees. Restricting it to only particular palm trees or trees is not allowed, as such trees may or may not be fruitful. Such a situation involves fraud, which is prohibited in Islam.

(3) The worker is responsible for everything necessary for the growth and care of the palm trees or trees according to the customary practices that apply to their irrigation.

(4) If there is any tax or duty that is levied on the land, it is the responsibility of the owner, not the worker, to pay them all. This is because paying the tax and duty is related to the basic land. The proof of it is that even if there is no plantation or agriculture on the land, the tax on the land would be paid. As for paying out the *Zakah*, it is compulsory when reaching the minimum amount of wealth of fruits liable to the payment of *Zakah*. This is applicable to all, whether the owner or the worker of it, since the *Zakah* is related to the fruit itself.

(5) *Musaqah* contract on assets is permissible. A man giving his land to another in order to plant therein palm trees or trees, for example. Therefore, the latter will be responsible for the irrigation and land reformation until it becomes fruitful. This work is for one-fourth or one-third of the fruits of it. This deal would be made with the condition that

the term is fixed until they are fruitful, for example. The worker can receive his share from both the land and the trees together.

(6) The worker can appoint a substitute on his behalf in case the former is unable to resume his duties. The latter deserves to receive his share according to the contract.

(7) If the worker flees before the appearance of fruits, the owner can abrogate the contract. If he runs off after the appearance of fruits, a substitute for the worker should be appointed to complete the rest of the work. The wage of such substitute will be provided from the dues of the worker.

(8) If the worker dies, his inheritors should assign a substitute from their own part. Meanwhile, if both agree to abrogate the contract, the sharecropping contract becomes invalid.

### **Muzara'ah (Sharecropping)**

#### **Its Definition**

Sharecropping refers to a man giving a plot of land to another in order for him to farm it for a designated part of it (as payment) according to an agreement.

#### **Its Laws**

The majority of the Companions, their successors and the Imams have allowed it. However, some others have prohibited it. Those who consider it permissible produce the following evidence. The Messenger of Allāh ﷺ dealt with the people of Khaybar by (payment of) half of what it produced of fruits or crops. Al-Bukhari reported from Ibn 'Umar that the Prophet ﷺ agreed with the people of Khaybar (to give to the Muslim authority) half of what it produced of fruits or crops (from the lands of Khaybar). The Prophet ﷺ used to give his wives a hundred *Wasq* out of it (i.e. eighty *Wasq* of

dates and twenty *Wasq* of barley).<sup>[1]</sup> They hold that the meaning of what was reported about a prohibition of *Muzara'ah* refers to an agreement with unspecified details. They argue based on the *Hadith* of Rafi' bin Khadij who said, "Of the *Ansar*, we had more farms than anybody else (in Al-Madinah). We used to rent the land and under the condition that the yield of this plot would be for us and the yield of that plot would be for them (as the rent). One of those plots might yield something while the other might not. So, the Prophet ﷺ forbade us to do so." (Al-Bukhari and Muslim) Also, they say that this means that such a deal is (only) disliked (i.e. but not forbidden). Their evidence is the statement of Ibn 'Abbas, "Verily, the Messenger of Allah ﷺ did not prohibit it, rather he ﷺ said:

«أَنْ يَمْنَحَ أَحَدُكُمْ أَخَاهُ خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهِ خَرَاجًا مَعْلُومًا»

*"It is better for one of you to grant his land free to his brother than to charge him a fixed rental."* (Al-Bukhari)

### Its Regulations

The regulations for sharecropping are as follows:

- (1) The term should be fixed for a certain period such as one year, etc.
- (2) The portion that is agreed to should be fixed and its due proportion known, such as half, one-third, one-fourth, etc. The agreement should specify all of the crops on the land. For example, if it is said, "Whatever produce comes from such and such, then it is for you," this is not valid.
- (3) The owner of the land should provide seeding. In case the seeding is from the worker, it is called *Al-Mukhabarah*. There is a more severe disagreement about the

[1] It is said that the land described was gained as *Fay'* booty and an agreement was made with the people of Khaybar regarding it. In the *Fay'* booty there is a share of the Prophet ﷺ and his family. (Publisher)

permissibility of this kind than the former. Jabir said, "The Messenger of Allāh ﷺ has forbade *Al-Mukhabarah*." (Imam Ahmad with a *Sahih* chain of narration)

(4) If the owner of the land insists on receiving the seeding from the yield before its division, and distributing the rest between the owner and the worker, then the sharecropping is not correct.

(5) Renting out the land for cash payment is better than *Muzara'ah*. This is due to the statement of Rafi' bin Khadij, who said, "The Prophet ﷺ did not forbid us from renting out land for gold and silver."

(6) It is recommended that the landowner who has excess land grant it to his Muslim brother free of cost. The Messenger of Allāh ﷺ said:

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزَعْهَا أَوْ لِيَمْنَحْهَا أَخَاهُ»

«Whoever has land, let him use it for cultivation, or grant it to his brother free of cost.» (Al-Bukhari)

The Messenger of Allāh ﷺ said:

«أَنْ يَمْنَحَ أَخَاهُ خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهِ خَرَاَجًا مَعْلُومًا»

«It is better for him to grant his land free to his brother than to charge him a fixed rental from its produce.» (Recorded in the *Sahih*)

(7) The majority of the scholars hold the view that renting out land for food is a prohibited act. This is because it results in selling food for food with delay and credit, as well as inequality in weight and measure, and this is forbidden. As for the report that is related from Ahmad, in which he viewed it as permissible, it refers to *Muzara'ah*, not renting out the land for food.

## Al-Ijarah (Renting)

### Its Definition

*Al-Ijarah* is a contract requiring a service for a fixed period of time, in exchange for a fixed amount.

### Its Ruling

Renting is permissible. This is due to Allāh's statement:

﴿لَوْ شِئْتَ لَتَّخَذْتَ عَلَيْهِ أَجْرًا﴾

﴿If you had wished, surely you could have taken wages for it!﴾  
(18:77)

And His statement:

﴿إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ﴾

﴿Verily, the best of men for you to hire is the strong, the trustworthy.﴾ (28:26)

And He said:

﴿عَلَّانَ أَنْ تَأْجُرَنِي ثَمَنِي حِمَجٍ﴾

﴿that you serve me (for hire) for eight years.﴾ (28:27)

The Messenger of Allāh ﷺ said:

«ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ: رَجُلٌ أَغْطَى بِي ثَمَّ غَدَرَ، وَرَجُلٌ بَاعَ حُرًّا فَأَكَلَ ثَمَنَهُ، وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوْفَى مِنْهُ وَلَمْ يُؤْفِ أَجْرَهُ»

«Allāh the Mighty and Majestic says, "I will contend on the Day of Resurrection against three (types of) people: a man who (promises) to give in My Name and then does not, a man who sells a free man as a slave and devours his price, and a man who hires a worker and having taken full work from him, does not pay him his wages."» (Al-Bukhari)

The Messenger of Allāh ﷺ hired an expert traveler-guide from the Dayl tribe in order to guide him ﷺ along with Abu Bakr to Al-Madinah during their emigration. (Recorded in

the *Sahih*)

### Its Conditions

(1) Knowing the service, like the occupation of a residence, or stitching a garment, for example. This is because hiring is like selling, and in selling, the sold merchandise must be known and specific.

(2) The service should be permissible. Therefore, it is not permissible to rent out a female slave for sexual intercourse (i.e. prostitution), or a woman for singing or wailing, or leasing land for construction of a church, or producing intoxicants, etc.

(3) Knowing the rent or wage. Abu Sa'id said, "The Messenger of Allāh ﷺ forbade hiring a worker until his wages were made clear to him." (Reported by Ahmad and its narrators are men of the *Sahih*.)

### Its Regulations

(1) It is permissible to hire a teacher to teach knowledge or a skill. The proof is that the Prophet ﷺ released some prisoners of the battle of Badr so they would teach a number of the children of Al-Madinah how to write. (This was reported by those who recorded the war expeditions and battles, like Muhammad bin Ishaq.)

(2) It is permissible to hire a person to work for food and clothing. This is due to the statement of the Prophet ﷺ when he was reciting *Surah Al-Qasas* (Chapter 28), until he reached the story of the wedding of Prophet Musa, he ﷺ said:

«إِنَّ مُوسَىٰ أَجَرَ نَفْسَهُ ثَمَانِي حِجَجٍ أَوْ عَشْرًا عَلَىٰ عِفَّةٍ فَرْجِهِ وَطَعَامِ بَطْنِهِ»

«Verily, Musa hired himself out for eight to ten years in order to maintain his chastity (i.e. for his wedding) and for feeding his belly.» (Ahmad and Ibn Majah and there are disparaging remarks concerning its chain of narration.)

(3) The validity of renting a particular home assuming that

it will remain until the leasing period expires.

(4) If someone rents something to someone else, but the lessor prevents the lessee from using it for a period, the rent should not be charged (i.e. it should be prorated) for the number of days in which he was prevented from using it. Meanwhile, if the lessee abandons its usage himself, then he must pay the complete rent.

(5) The lease should be canceled if the rented item becomes damaged. For example, collapsing of the home, or death of the animal, etc. In this case, only the period of use before the damage is chargeable for rent.

(6) Whoever rents something and later finds it defective, he has the right to cancel the lease. This is applicable as long as he was not aware of the defect and satisfied with it at the beginning of the contract. If he benefited from the rented item for a certain period, he has to pay the rent for only the used period.

(7) General laborers, such as tailors and blacksmiths, if they damage something due to their work, are responsible for such damage (i.e., not the shopkeeper). If something is lost from the shop, they are not responsible for it (i.e., the shopkeeper is responsible). This is because it should be considered as a deposit (or trust), and the lost or damaged deposits are not the responsibility of the worker unless he himself was negligent. The private employee is the same as one hired to personally work for the employer. Such employee is not responsible for any damage that occurs during his work. In case the employee intentionally causes damages and it is proved that he did so neglectfully, he is responsible for such damage.

(8) The rent or wage becomes obligatory at the conclusion of the contract. So he will pay after using the service or after the job is complete, unless he puts a condition to pay at the conclusion of the contract (a longer period). The Messenger of Allāh ﷺ said:



«لَكِنَّ الْعَامِلَ إِنَّمَا يُوفَّى أَجْرُهُ إِذَا قَضَى عَمَلَهُ»

«Verily the worker should be paid his wages in full when he finishes his work.» (Ahmad and in its chain of narration there is weakness)

(9) The hired worker can withhold the property until he receives his wages if his work is done to the property itself, like in the case of tailoring. If his work does not involve the property itself; like in the case of wages for loading and carrying goods to another location, he has no right to seize the goods. Rather he has to deliver it to its destination and then demand his wages.

(10) If a person treats a patient with medical treatment or gives him medicine for wages, but he is not a medical expert and he causes any damages, he is to be held responsible for it. This is due to the Messenger of Allāh's statement:

«مَنْ تَطَبَّبَ وَلَمْ يُعْلَمْ مِنْهُ طِبٌّ فَهُوَ ضَامِنٌ»

«Whoever practices medicine and he is not known for expertise in medicine, he will be held responsible.»<sup>[1]</sup>

## Wages for a Laborer

### Its Definition

Linguistically it means a wage given to someone for something he does. In Islamic terminology it means that a person who is permitted to carry out transactions allots a fixed amount of wealth to someone who performs a specific

[1] Abu Dawud, An-Nasa'i and Ibn Majah. Abu Dawud said he did not know whether it is authentic or not. The person who is known for expertise in medicines is the one who knows illnesses and medicines and he has teachers who testify to his ability to give medical treatment and his expertise in it. These medical teachers have likewise given him permission to practice as a doctor.

job, whether the person is known or unknown. For example, he says, "I will pay him such and such amount to anyone who erects this wall for me." Therefore, whoever erects the wall for him, will deserve the wage, whether it is small or large amount.

### Its Ruling

Giving a reward to a laborer is permissible. This is due to Allāh's statement:

﴿وَلِمَن جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ﴾

«And for him who produces it is (the reward of) a camel load, and I will be bound by it.» (12:72)

The Messenger of Allāh ﷺ said to those Companions who earned a flock of sheep as a reward for reciting some Divine Prayers over the chief of a tribe, who was stung by a scorpion:

«خُذُوهَا وَاضْرِبُوا لِي مَعَكُمْ بِسَنَهِمٍ»

«Take what you have earned and assign a share for me as well.» (Some of this *Hadith* was recorded by Al-Bukhari in the Book of Renting)

### Its Regulations

The regulations of rewarding a laborer are as follows:

(1) Giving a wage to a worker is a permissible contract. Therefore, it is permissible for both contractual parties to cancel the deal. If the cancelation takes place before starting the job, there is nothing payable to the worker. If it is during the work, the worker has the right to a wage according to his work.

(2) It is not required to make a condition to fix the working period. If one says, "If anyone returns my fugitive, straggling or lost animal back, he will get one dinar." This means that he deserves the dinar upon returning the said animal to him even after one month or one year.

(3) If a group of workers perform the job, the wage should be divided equally among them.

(4) It is not permissible to allot the wage for workers in order to commit any forbidden job. Therefore, it is unlawful to say, "If anyone sings, or plays a flute, or beats a person or abuses him, he will get such and such."

(5) If anyone returns the lost and found articles, or returns lost animals or does a job not knowing there is a reward in it, he is not entitled to the reward. This is because at the very outset, his service was voluntary. Therefore, he holds no right to the reward except in case of returning the fugitive slave, or rescuing the drowned. In that case, he should be given the reward as an incentive for such an endeavor.

(6) If someone says, "Whoever eats or drinks such and such lawful things, he will get a wage of such and such," such a reward is valid. However, if he says, "Whoever eats such and such and leaves any of it, he must give such and such," this type of wage is invalid.

(7) If the owner and worker dispute about the amount of the wage, the statement of the owner should be accepted by swearing. If a dispute arises about the wage itself (i.e. what it is, money or food etc.), the worker's claim should be accepted by his swearing.

## **Debt Transferral**

### **Its Definition**

It is transferring a debt from one person's obligation to another. For example, a person owes a debt, and another person owes him a debt that is similar to the debt that he owes. Thus, when the creditor demands repayment of his debt the first person says, "I refer you to so-and-so, because he owes me a debt similar to yours, so take it from him." If the creditor is satisfied with this, the responsibility

of the debtor is absolved.

### Its Ruling

Transferring of debt is permissible. It is the responsibility of the creditor to accept when the debtor refers him to a wealthy man regarding his payment. The Messenger of Allāh ﷺ said:

«مَطْلُ الْغَنِيِّ ظُلْمٌ، فَإِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيٍّ فَلْيَتَّبِعْ»

*«A rich man's intentional delay of a debt settlement is injustice. So if one of you are referred to a wealthy man, he should accept the transferal.»* (Al-Bukhari and Muslim)

The Messenger of Allāh ﷺ said:

«مَطْلُ الْغَنِيِّ ظُلْمٌ وَإِذَا أُجِلَّتْ عَلَى مَلِيٍّ فَاتَّبِعْهُ»

*«A rich man's intentional delay of a debt settlement is injustice. And if you are transferred to a wealthy man, then accept it.»* (This was recorded by the Sunan compilers and the wording here is that of Ibn Majah.)

### Its Conditions

The conditions for transferring debt are as follows:

- (1) The debt intended for transfer should be confirmed and it exists under the obligation of the debtor.
- (2) Both debts should be similar in kind, number, amount, description and payment schedule.
- (3) The transferor and the person to whom the debt is transferred should both consent to the transfer. This is because the transferor, although he has a duty (to repay his debt), he is not necessarily required to repay the debt by the means of transfer. Rather, he is free to choose how he will fulfill this obligation. The person who the debt is transferred to, although Islam requests him to accept it, is not required to repay the debt by mode of transfer, except as a courtesy and benevolence from him. This is because

transference of the debt is not an obligatory contract. Rather, it is merely a contract meant for kindness among the Muslims.

### **Its Regulations**

(1) The person to whom the debt is transferred should be a wealthy man capable of fulfilling the payment. The Messenger of Allāh ﷺ said:

«إِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيٍّ فَلْيَتَّبِعْ»

*«So if one of you are referred to a wealthy man, he should accept the transferal.»* (Al-Bukhari and Muslim)

(2) If the debt is transferred to a person and it is found that he is bankrupt or deceased or absent for a long time, the obligation of the transferred debt will return to the transferor.

(3) If a person transfers a debt to another, while the latter transfers it to a third person, the transference in such a case is valid. This is because repeating the transfer from one to another is not harmful as long as the conditions of the transfer are valid.

## **Liability**

### **Its Definition**

Liability transfers the right and places it upon one from whom it is due. For example, if a person has something that belongs to another and he demands him to return it, then another person permitted to deal on behalf of whom it is due responds: 'I have what you seek and I am liable for him.' Therefore, he becomes liable. The owner of the right can demand his dues from that person. In case the one liable is not able to return the right to him, the one to whom it is due can demand it directly from the original debtor.

## Its Ruling

Liability is permissible. Allāh said:

﴿وَلَمَن جَاءَهُ يَدٌ فَمَلَاحِظَةٌ وَرَأَى أَنَّهُ يُغْنِيهِ﴾

«And for him who produces it is (the reward of) a camel load;  
and I will be bound by it.» (12:72)

The word *Za'im* in this *Ayah* refers to liability and bond.  
The Messenger of Allāh ﷺ said:

«الزَّعِيمُ غَارِمٌ»

«The one liable is a debtor (bound to pay).» (Abu Dawūd and At-Tirmithi who said it is *Hasan*)

and his saying:

«إِلَّا إِنْ قَامَ أَحَدُكُمْ فَضَمَّتهُ»

«Unless one of you stands and agrees to be his guarantor.» (Al-Bukhari)

He ﷺ said this regarding a man who died having a debt and he did not leave behind anything to cover it. Thus the Messenger of Allāh ﷺ refused praying the funeral prayer for him.

## Its Regulations

The regulations regarding liability are as follows:

- (1) The guarantor should approve of the liability. As for the original debtor, his consent is not necessary.
- (2) The obligation of the debtor will not be absolved unless his guarantor fulfills his obligation. Whenever the obligation of the debtor is absolved, the obligation of the liable guarantor is also absolved.
- (3) The debtor's knowledge is not necessary in the statement guarantee. This is because it is not possible for a man to claim liability for someone he does not know at all, since such liability is a voluntary act and an act of

kindness.

(4) There is no guarantee except in the case of a right which is certain and existing in an obligation, or in something that leads to its fulfillment, such as wages for worker.

(5) There is no harm in having a number of guarantors. Likewise, there is no harm if one assumes liability for a guarantor, this is also permissible.

### **Textual Format for Claiming Liability<sup>[1]</sup>**

In the Name of Allāh. All the praise is due to Allāh.

"This guarantee has been presented before witnesses on such and such date. I testify to these witnesses that he has guaranteed and taken responsibility for the obligation of so-and-so, for such and such amount (mention whether it is cash up front or installments or credit, being a delayed payment for a fixed period, etc.). It is a legal liability concerning his obligation and his property. I attest that he is suitable and capable to fulfill that guarantee. He knows the meaning of the guarantee and its legal consequences. The guaranteed has accepted his guarantee. This is recorded on such and such date."

## **Sponsorship**

### **Its Definition**

Sponsorship is one's commitment to fulfill a right that another is obligated to, or a commitment to present him before the court.

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<sup>[1]</sup> The objective of presenting this format is not that the writer of the agreement must adhere and confine himself exactly to it without going outside of its wording. Rather it is only to give an example of such an agreement, while alluding to the fundamental pillars of it. These pillars must be present in the agreement, such as mentioning the two parties involved in the contract, what the contract applies to and mentioning the witnesses.

### Its Ruling

Sponsorship is permissible. Allāh said:

﴿لَنْ أَرْسِلَهُ مَعَكُمْ حَتَّى تُؤْثِرُوا بِرَأْسِهِ اللَّهِ لَأْتَأْتَنِي بِهِ، إِلَّا أَنْ يَحَاطَ بِكُمْ﴾

«I will not send him with you until you swear a solemn oath to me in Allāh's Name, that you will bring him back to me unless you are yourselves surrounded (by enemies).» (12:66)

The Messenger of Allāh ﷺ said:

«لَا كَفَالَةَ فِي حَدٍّ»

«No sponsorship is acceptable for legal punishments.» (Al-Bayhaqi and Ibn 'Adiy. There is weakness in its chain of narration, however its meaning is authentic.)

The Messenger of Allāh ﷺ said:

«الرَّعِيمُ غَارِمٌ»

«The guarantor is a debtor.» (See earlier)

### Its Regulations

The Regulations of sponsorship are as follows:

1. It is a condition of sponsorship that the person being sponsored is known, particularly in the sponsorship of producing him before the court.
2. The acceptance of the sponsor is considered.
3. If a person sponsors another person in a sponsorship of wealth, and the sponsored person dies, the sponsor will be the guarantor for the amount. If the sponsor gave a guarantee of presenting the sponsor (i.e. in court) and the sponsored person dies, there is no obligation due upon him.<sup>[1]</sup>
4. Whenever the sponsor has produced the sponsored

[1] Malik said, "He is monetarily fined regardless of the type of sponsorship."



person physically before the judge, the obligation of the former will be absolved.

5. Sponsorship is only acceptable in cases where a representative can be appointed, like wealth. As for the things in which representation is not permissible, like legal punishments and laws of retaliation in prescribed punishments, then sponsorship is not valid therein. This is due to the Messenger of Allāh's statement:

«لَا كَفَالَةَ فِي حَدٍّ»

«No sponsorship is acceptable in legal punishments.» (Al-Bayhaqi, see earlier.)<sup>[1]</sup>

## Pawning and Mortgaging

### Its Definition

It is the security for a debt against an article that can cover it or its value (in case of non-fulfillment). For example, a person seeks to borrow something from another as a debt and the latter demands from the former to give him an article as a security, such as an animal, real estate properties, or something else, in order to secure the debt. If the fixed term ends and he does not repay the debt, he can take it from the collateral that is kept with him. The creditor is called the *Murtahin*, the debtor is called the *Rahin* and the article given as collateral is called *Rahn*.

### Its Ruling

Pawning or mortgaging is permissible. Allāh says:

﴿وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَوَسِّدَةً﴾

«And if you are on a journey and cannot find a scribe, then let

[1] The Hanafis disagree with the majority on this matter. They say that sponsorship in matter of punishment is allowed, due to the weakness of the *Hadith*.

there be a pledge taken (mortgaging). ﴿ (2:283)

The Messenger of Allāh ﷺ said:

«لَا يُغْلَقُ الرُّهُنُ مِنْ صَاحِبِهِ الَّذِي رَهَنَهُ، لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ»

«The one who pawned an item has not been completely closed off from it; any increase in its value goes to him and any loss or liability must be borne by him.» (Ash-Shafi'i, Ad-Daraqutni and Ibn Majah, and it is *Hasan* due to its numerous routes of transmission.)

Anas said, "The Messenger of Allāh ﷺ pawned his armor with a Jew in Al-Madinah and he took some barley for his family from him." (Al-Bukhari)

### Its Regulations

The regulations for pawning are as follows:

(1) The collateral must be owned by the debtor and not the creditor. If the debtor seeks to take the collateral back from the possession of the creditor, he may not do so. As for the creditor, he may return the collateral, because it is his right in this regard.

(2) Anything that is not valid for selling, is also not valid to put them up as collateral. The fruits and crops before the appearance of their goodness are an exception to this rule. The sale of such produce is forbidden, but using them as collateral is permissible. This is because there is no deceit of the creditor involved, as his debt is still confirmed as an obligation (to be repaid) even if the vegetation or fruits are damaged or ruined.

(3) Whenever the fixed term of the collateral ends, the creditor can demand the repayment of the debt. If the debtor pays the debt, the creditor returns the collateral to him. Otherwise, his due should be deducted from the collateral, which is kept in his possession. If the collateral is used in trading and earns yield and growth, the creditor should recover his debt from it. If he fails to deduct, he can

sell the article from his custody and deduct his due from it. Whatever is left after his deduction should be return to the debtor. If he cannot recover the whole debt even after selling the article and deducting the amount due, the rest of the amount will remain due to the debtor.

(4) The pawned article will be entrusted to the creditor. If the article is damaged due to his negligence or breaking it, he will be responsible for it. If he does not cause its damage, he will not be responsible for it and the debt will continue to remain in the obligation of the debtor.

(5) It is permissible to keep the pawned article with an honest person other than the creditor. This is because the objective of collateral is to secure the debt, and by keeping it with a trustworthy person it is achieved.

(6) If the debtor stipulates a condition that the pawned article should not be sold after the fixed term ends, such collateral will become invalid. Similarly, if the creditor makes a condition that when the fixed term ends and the debtor does not return the debt to him, the pawned article will be belong to him, such collateral is also invalid.

The Messenger of Allāh ﷺ said:

«لَا يُغْلَقُ الرَّهْنُ، الرَّهْنُ لِمَنْ رَهْنَهُ، لَهُ غَنَمُهُ وَعَلَيْهِ غَرَمُهُ»

*«The pawned item is not completely closed off; any increase in its value goes to him and any loss or liability must be borne by him.»* (Ibn Majah with a *Hasan* chain of narration.)

(7) If any dispute arises between the creditor and debtor over the value of the debt, the statement of the creditor should be accepted by his swearing an oath. This is the case if the debtor does not produce any proof. If they both disagree about the pawned article, for example, the debtor claims that an animal with its child was the pawned article, but the creditor denies it and claims that it was only the animal. In such case, the statement of the creditor should be accepted by his swearing an oath, unless the debtor

produces evidence to prove his claim. The Messenger of Allāh ﷺ said:

«الْبَيِّنَةُ عَلَى الْمُدَّعِي وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ»

«The proof is to be provided by the plaintiff, otherwise the defendant has to take an oath.» (Al-Bayhaqi with a Sahih chain of narration and its basis is in Al-Bukhari and Muslim.)

(8) If the creditor claims that he returned the pawned article and the debtor denies it, the statement of the debtor is accepted by his swearing an oath, unless the creditor produces the proof to confirm that he returned the article.

(9) It is permissible for a creditor to use a pawned animal for his ride and drink its milk if such usage does not exceed his actual expenditures on the pawned animal. He must observe fair and just consideration regarding the use of the collateral and therefore, he should not benefit from it more than the actual expenses that he spends on it. The Messenger of Allāh ﷺ said:

«الظَّهْرُ يُرَكَّبُ بِتَفَقُّهِ إِذَا كَانَ مَرْهُونًا، وَلَكِنَّ الدَّرَّ يُشْرَبُ بِتَفَقُّهِ إِذَا كَانَ مَرْهُونًا، وَعَلَى الَّذِي يَرْكَبُ وَيَشْرَبُ التَّفَقُّعُ»

«A pawned animal can be used for riding due to his spending on it if it is collateral, and the milk of a pawned camel may be drank due to his spending on it if it is collateral. The responsibility of caring for it and feeding it is upon the one who rides on its back and drinks its milk.» (Al-Bukhari)

(10) The earnings received from the collateral such as rent, yield and progeny belong to the debtor. Therefore, it is his responsibility to give it drink and provide whatever it requires for its livelihood. The Messenger of Allāh ﷺ said:

«الرَّهْنُ لِمَنْ رَهَنَهُ، لَهُ غَنَمُهُ وَعَلَيْهِ غَرَمُهُ»

«A pawned item belongs to the one who gave it as collateral. Any increase in its value goes to him and any loss or liability must be borne by him.» (A similar Hadith has been mentioned previously.)

(11) If the creditor spent on the pawned animal without permission from the debtor, he does not have the right to demand it from him. In cases where obtaining such permission is too difficult because he is far away, then he can demand reimbursement from him for what he spent on it. This applies only if he spent on it with the intention of seeking reimbursement for it from the debtor. Otherwise, it is not refundable to him, because whoever performs an act voluntarily, he has no right to demand compensation for it.

(12) If a pawned building becomes damaged and the creditor repairs it without permission from the debtor, he has no right to demand compensation from him for it. If a damaged item becomes too difficult to remove, such as a piece of wood or a rock, he can demand its labor charge from the debtor.

(13) If the debtor dies or becomes bankrupt, the creditor has more right to the pawned article than other people whom the debtor owes. If the fixed term ends, he can sell it and recover his debt from it. Whatever is left over after his deduction should be returned to the debtor. If the debt is not covered by selling the collateral, he should share the rest of debt with other debtors.

### **Textual Format for Registering the Mortgage**

In the Name of Allāh and all praises are due to Him.

“So-and-so agrees that he owes a debt of such and such amount payable to so-and-so. The fixed term of the debt is the end of so-and-so month or year. The above-named has given collateral under the custody of the named creditor being a security for his above-mentioned debt. The above mentioned will be in his possession and under his custody until the term expires. The collateral is the entirety of such and such building or the entirety of such and such thing, which is legally sound, free from any defects, possessed and held by the creditor. Therefore, the above said collateral is legally acceptable to the creditor. This agreement has been

ratified on such and such date.

## Representation

### Its Definition

Representation refers to a substitute on behalf of another in a certain matter in which representation is permissible, such as selling, buying, litigating, etc.

### Its Conditions

The representative and the client should be among those who are responsible and obligated to observe the teachings of Islam, (i.e. both are legally capable, sane in mind, and have their own free will).

### Its Ruling

Representation is permissible according to the Qur'an and Sunnah. Allāh says:

﴿وَالْمَعْلُولِينَ عَلَيْهِ﴾

﴿and those employed to collect ( the funds)﴾ (9:60)

Meaning those who work with the charity. They are the representatives of the Imam for the collection of *Zakah*.

Allāh said:

﴿فَأَبْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِنْهُ﴾

﴿So send one of you with this silver coin of yours to the town, and let him find out which is the good lawful food, and bring some of that to you.﴾ (18:19)

Thus, they authorized one of them to buy food for them. The Messenger of Allāh ﷺ said to Unays:

«اغْدُ يَا أُنَيْسُ إِلَى امْرَأَةٍ هَذَا فَإِنْ اعْتَرَفَتْ فَأَرْجُهَا»

«O Unays! Go in the morning to the wife of this man and if

*she confesses (to adultery), stone her (to death).*» (Al-Bukhari)

He ﷺ authorized Unays, may Allāh be pleased with him, to investigate the allegation and then to enforce the prescribed punishment.

Abu Hurayrah, may Allāh be pleased with him, said, "The Messenger of Allāh ﷺ authorized me to guard the *Zakah* of Ramadhan."

The Messenger of Allāh ﷺ said to Jabir, may Allāh be pleased with him:

«إِذَا أَتَيْتَ وَكَيْلِي فَخُذْ مِنْهُ خَمْسَةَ عَشَرَ وَسَقًا، وَإِنْ ابْتَغَى مِنْكَ آيَةً - أَيْ عَلَامَةً - فَضَعْ يَدَكَ عَلَى تَرَفُوتِكَ»

*«If you go to my representative, take from him fifteen Wasq. If he asks you for any proof or evidence, place your hand on your clavicle (collarbone).»* (Abu Dawud, and Ad-Daraqutni. Its chain is *Hasan* and some if it is in Al-Bukhari.)

(One *Wasq* is a camel-load, which is equal to sixty *Sa'*.)

The Messenger of Allāh ﷺ sent his freed slave, Abu Rafi' along with a man from *Al-Ansar* and they performed the marriage contract on behalf of the Prophet ﷺ with Maymunah bint Al-Harith, may Allāh be pleased with her, while he was in Al-Madinah. Therefore, he appointed them as his representatives regarding the execution of the marriage contract with her. (Malik)

### **Its Regulations**

The regulations of representation are as follows:

- (1) Representation is confirmed by any word that indicates permission for it. There is no condition that it must be in any particular format for this purpose.
- (2) Representation is for every personal right, such as contracts like selling, buying, marriage, reconciling with the wife after divorce, and dissolving marriage, like divorce initiated by the husband or the wife. Representation is also

valid in the matters of rights of Allāh in which authorization on behalf of someone is permissible. This is like distribution of *Zakah*, and performing the *Hajj* and *'Umrah* on behalf of a deceased or one who is unable.

(3) Designating a representative is valid for investigating and enforcing the prescribed punishments. The Messenger of Allāh ﷺ said:

«اغْدُ يَا أُتَيْسُ! إِلَى امْرَأَةٍ هَذَا، فَإِنْ اعْتَرَفَتْ فَأَرْجُمُهَا»

*«O Unays! Go in the morning to the wife of this man and if she confesses (to adultery), then stone her.»* (Al-Bukhari)

(4) Designating a representative is not valid for acts of worship in which authorization on behalf of someone is not permissible, like performing *Salah* and fasting.<sup>[1]</sup> Designating a representative is also not valid in matters of *Li'an*,<sup>[2]</sup> *Thihar*,<sup>[3]</sup> oaths, vows, and testimonies, etc. Designating a representative is also not valid for forbidden things, since whatever is unlawful to do, is also unlawful to designate a representative for.

(5) Representation is nullified by cancelation, death, or madness in regard to either of the parties, or when the client dismisses his representative agent.

(6) A representative who is authorized for buying and selling is not permitted to sell and buy from the following:

- Himself,
- His children
- His wife

[1] It is permissible to fast on behalf of someone who died without fasting an obligatory fast, like making up for missed days of Ramadhan or a vow to fast.

[2] A means of divorce where one of the spouses invoke the curse of Allāh on the other because of an accusation of adultery.

[3] A means of divorce in which the husband declares his wife to be as forbidden to him as his mother's back.



- Those whose witness is not acceptable because there is suspicion of favoritism and partiality due to family relations.

- The one who has an agreement to sell on behalf of someone else and share the profit, the guardian of a will, a business partner, judges, and supervisors of endowments since they are similar to the representative in the above matters.

(7) The representative is not a liable for things that are lost or damaged as long as he displays neither negligence nor disregard with such items. If he displays negligence or disregard in dealing with the things, he will be liable for what is lost or damaged.

(8) Designating an unconditional representative is valid. For this reason, authorization is permissible in every personal right. Therefore, the representative will act in the best interest for the individual rights he is authorized for. Meanwhile, some cases are exempt from authorization, such as divorce, wherein a firm resolution and determination is required from the one initiating it.

(9) If the client authorizes his representative to buy a particular thing, then it is not permissible for him to buy something else. If the representative buys something other than what he is authorized to buy, the client is free to accept it or not. Similarly, if the representative buys a defective thing, or fraudulent material, the client can accept it or reject it.

(10) Giving a wage for representation is valid. In such a case, fixing the wages and specifying the desired work is a precondition.

### **Textual Format for Writing an Agreement of Representation**

All praises are due to Allāh.

“So-and-so has authorized so-and-so person - and both are healthy and sane, and their dealing is permissible - to do

such and such thing. The representative has accepted the above mentioned responsibility and agreed to it after the witness of two witnesses, who are so-and-so and so-and-so. This contract has been ratified on such and such date."

## Reconciliation

### Its Definition

Reconciliation is a contract between two disputants in order to solve their problems peacefully. For example if someone believes and claims to have some rights due from another, and the defendant confesses to it although he does not know about it, thus, a reconciliation is made to avoid any further dispute over it as well as to get rid of any swearing, which would be required of him in the case of his denial.

### Its Ruling

Reconciliation is a permissible act. Allāh said:

﴿فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ﴾

«There is no sin on them both if they make terms of reconciliation between themselves; and making reconciliation is better.» (4:128)

The Messenger of Allāh ﷺ said:

«الصُّلْحُ بَيْنَ الْمُسْلِمِينَ جَائِزٌ إِلَّا صُلِحَ حَرَمٌ حَرَامًا أَوْ أُحِلَّ حَرَامًا»

«Reconciliation among the Muslims is permissible, except the reconciliation which makes unlawful something which is lawful or makes lawful what is unlawful.» (Abu Dawud and At-Tirmithi, who graded it Sahih)

### Its Categories

There are three types of reconciliation related to financial matters:

A. Reconciliation on the claim or agreement. This is when someone claims some right upon another, and the latter

agrees to give him what he claims in order to reconcile without denying the plaintiff his right. For example, he deducts some amount from the loan, which he originally agreed to pay him. It could also be giving him a gift from the asset that he confessed to pay for. It could also be making reconciliation by giving something other than what he agreed. For example, he agreed to give him a house, but he gives him some cash payment or he agreed to give him an animal, but instead he gives him a garment.

B. Reconciliation with denial.<sup>[1]</sup> A person claims that he has some right over another but the defendant denies it. Thereafter, he makes reconciliation to give something in order to drop his claim over it, because he wishes to avoid any dispute and swearing that is required of him if he denies the claim.

C. Reconciliation over silence. This is when a person claims some right upon another. However, the defendant remains silent, neither confirming nor denying it. Therefore, the defendant makes some reconciliation with the plaintiff so that he will drop the claim and abandon the dispute.

### **Its Regulations**

The following are the laws of the reconciliation:

(1) The reconciliation concerning a thing that is claimed without taking it is similar to a sale. In terms of permissibility, restrictions and other related rules of trading, such as returning what is defective, receiving it or rejecting it in case of injustice and inequity, and preemption on the neighboring properties that are undivided, etc. All these rules are similar to that of reconciliation. Therefore, if a person has a claim against another regarding a house and he reconciled with him for a garment, however, he

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<sup>[1]</sup> Imam Ash-Shafi'i, may Allāh have mercy upon him, was of the view that a reconciliation is not valid in the case of a denial, contrary to the view of the majority.

made a condition that it should not be worn by so-and-so, then in such case reconciliation is not valid. This is because it will be like a sale in which he made a condition that invalidates the contract. If someone claims a cash payment of dinars, but the other reconciled with the payment of dirhams on credit, such reconciliation is not valid. This is because possession of the currency on the spot is the condition of the deal when exchanging currencies. If a person claims a garden, but the other reconciles with a half of the house, the partner of the house has the right to demand the preemption of half of it in which the reconciliation was made. If a person made reconciliation by accepting an animal due to a claim, and then he found it to be defective, he is then free to accept it or return it. Likewise, reconciliation made with the kinds of items that are different than that which he claims is similar to selling in the rest of its rulings.

(2) If one of the two reconcilers knows that he is lying, his reconciliation is invalid, and whatever he takes by way of reconciliation is forbidden for him.

(3) Whoever confesses to have an obligation, but he refuses to fulfill it unless he is given something (in return), then that is not permissible for him. This is like a person who confesses to owing a thousand dinars but he refuses to pay it unless five hundred of it is deducted. However, if he does not make any condition to deduct anything from it, but the person to whom the money is due gives a generous grant from himself or he deducts from the amount owed due to the intercession of someone else, the confessor is allowed to accept it. This is due to the authentic narration in which the Messenger of Allāh ﷺ told the people whom Jabir owed a debt to decrease his debt by half. (Al-Bukhari)

It is also reported that Ka'b bin Malik sought repayment of a debt from Ibn Abi Hadrad in the *Masjid* and their voices became so loud that the Messenger of Allāh ﷺ heard them in his apartment. Thus, he came out to them and called

Ka'b. Ka'b answered, "I am here at your service, O Messenger of Allāh." Then the Prophet ﷺ made a gesture to him to lower his debt by half. Ka'b replied, "I have already done so, O Messenger of Allāh." The Prophet ﷺ then said (to Ibn Abi Hadrād):

«قُمْ فَأَعْطِيهِ»

«Get up and pay him).» (Al-Bukhari)

(4) If he reconciles with his partner that he will open a window or a door in a wall for a specific compensation, such reconciliation is valid because it is similar to a trade.

### **Textual Format for Writing an Agreement of Reconciliation**

In the Name of Allāh. All praise is due to Allāh and may peace and blessings be upon His Prophet ﷺ.

"So-and-so has reconciled with so-and-so due to his claim that he owns and has the right to such and such house (being specific and mentioning its features). So-and-so defendant currently possesses this house. After they both disputed over this claim, the first reconciler confessed to what the other claims. It is endorsed by legal attestation that the amount to be paid for reconciliation is such and such dirhams, or to give such and such things as a legalized reconciliation. Both are satisfied with this and agree to it. The first reconciler has paid to the second everything that is to be paid as the reconciliation, and he possessed the same in a completely legal manner. The above-mentioned second reconciler has agreed that he does not have any further right or dues upon the first reconciler in demanding anything related to the house. He also has no claim, demand, ownership or semi-ownership, benefit, right to benefit, or anything else small or large. They both agree to all of this as a legal agreement. This is executed by such and such method."

## The Cultivation of Barren Lands

### Its Definition

The cultivation of barren lands refers a Muslim taking a land not possessed by any owner, and looking after it by planting trees in it or constructing buildings on it or excavating a well in it. Due to his special attention and care for the land, he becomes the owner of it.

### Its Ruling

The cultivation of barren lands is permissible and allowed. The Messenger of Allāh ﷺ said:

«مَنْ أَخْيَا أَرْضًا مَيِّتَةً فَهِيَ لَهُ»

*«If anyone makes a barren land productive, it belongs to him.»*

(Ahmad and At-Tirmithi, who graded it *Sahih*)

### Its Regulations

(1) The barren land cannot be owned by the one who cultivated and renovated it except with the following two conditions:

First: That he truly cultivated it by planting trees, building houses, or excavating water wells. Therefore, it is not sufficient to revive it by planting crops, putting up signs, or fencing it in with a fence of thorns or something similar. Rather he is only more deserving of it than others.

Second: It should not exclusively belong to any person. The Messenger of Allāh ﷺ said:

«مَنْ أَعْمَرَ أَرْضًا لَيْسَتْ لِأَحَدٍ فَهُوَ أَحَقُّ بِهَا»

*«Whoever cultivates a land that does not belong to anyone, then he has the most right to it.»* (Al-Bukhari)

(2) If the land is near the city or within the town, it should not be cultivated without obtaining permission from the authorities. This is because perhaps the public utilities

there belong to the Muslim community. Thus, owning and possessing such land will cause inconveniences and harms to them.

(3) The minerals of the barren land such as salts, petroleum products, etc., which are related to the public welfare of the Muslim community, therefore, cannot be owned and possessed by cultivation or renovating. The Messenger of Allāh ﷺ granted the mineral of salt to a person (who had cultivated a land). However, he changed his decision and requested him to return it. (Abu Dawud and At-Tirmithi, who graded it *Hasan*)

(4) If any running water appears from the barren land, the cultivator has more right to use this water than others. He takes whatever he needs from it before anyone else. The extra is for the Muslim public. The Messenger of Allāh ﷺ said:

«النَّاسُ شُرَكَاءُ فِي ثَلَاثَةٍ: فِي الْمَاءِ، وَالْكَلْبِ، وَالنَّارِ»

«People collaborate in three things: water, pasture, and fire.»

(Ahmad and Abu Dawud, and Ibn Hajar graded its chain of narration *Sahih*)

### Important Notes:

In the case of a protected area (that is reserved for public use) of a well on a land, if it is old and digging is only performed for its renovation, its area should be fifty cubits. If the well's digging started recently (i.e. it is new), then its protected area of the land around it is twenty-five cubits. Thus, the owner of the well owns the area around the well, as some of the scholars of the *Salaf* acted according to this rule. It has also been reported in a *Hadith*:

«حَرِيمُ الْبُئْرِ مَدُّ رِشَائِهَا»

«The protected approach area of the well is equal to the length of its rope.» (Ibn Majah with a weak chain of narration)

The protected approach area of the tree or date palms is

equal to the length of its branches or its palm-leaf stalk. Whoever owns a tree in a barren land he has the right to possess the area around it equal to the length of its branches and palm-leaf stalks. This is due to the Messenger of Allāh's statement:

«حَرِيمُ النَّخْلَةِ مَدُّ جَرِيدَتِهَا»

*«The protected approach area of the palm tree is equal to the length of its palm-leaf stalk.»* (Ibn Majah with a weak chain of narration)

The protected area of the house is equal to the space around it that is required for throwing the sweepings, the kneeling down of a camel, or parking of a car. If a man builds a house in the barren land, he has the right to the surrounding area, which is traditionally known as that which it annexes.

## Extra Water

### Its Definition

Extra water refers to when a Muslim has water in a well or a river that is more than his actual requirement for drinking and irrigation of his plants and trees, etc.

### Its Ruling

The ruling for extra water is that it should be provided to the needy among the Muslims free of cost. This is due to the Messenger of Allāh's statement:

«لَا يَبَاعُ فَضْلُ الْمَاءِ لِيَبَاعَ بِهِ الْكَلَاءُ»

*«Excess water should not be sold so that the pasture may be sold.»* (Muslim)

The Messenger of Allāh ﷺ said:

«لَا يُبْتَعُ فَضْلُ الْمَاءِ لِيُبْتَعَ بِهِ الْكَلَاءُ»



*«The excess of water should not be withheld in order to prevent the pasture from growing.» (Al-Bukhari and Muslim)<sup>[1]</sup>*

### **Its Regulations**

The laws of excess water are as follows:

- 1) The giving of excess water is not done until its owner no longer needs it.
- 2) The receiver of such superfluous water should be in need of it.
- 3) Giving it should not cause any kind of harm and difficulty to its owner.

### **Note:**

If the water of the valley flows, the Muslim residents of the upper part of the valley will benefit from the water first, then the next and so on. It will continue to be used until reaching to the end of the farm, which is intended for irrigation, or until the flowing of water becomes finished. The surrounding farms, which are equally close to the beginning of the flow, should divide the water among them according to the size of their farms. If they dispute then they should draw lots and distribute it accordingly.

Ibn Majah reported on the authority of 'Ubadah bin As-Samit that, "The Prophet ﷺ gave a verdict on irrigating the palm trees from the flowing water of the valley. Those on the upper part of it should use the water before the lower ones do. Let them leave the water until it gathers, reaching up to the two ankles. Then they should allow it to flow to the lower part that is nearest to them, and so on until the water covers the whole crop or until the water is depleted."

[1] The wording that is in Al-Bukhari and Muslim both is, "Do not withhold excess water in order to prevent the pasture from growing." This is because the people in the time of the Prophet ﷺ used to prevent the shepherds from watering their animals so that they would stay away from them and the grass of the surrounding pastures would remain specifically for themselves.

The Messenger of Allāh ﷺ also said:

«اشقِ يَا زُبَيْرُ، ثُمَّ أَرْسِلِ الْمَاءَ إِلَى جَارِكَ»

«Water (your garden) Zubayr, then send the water on to your neighbor.» (Al-Bukhari)

## Land Grants

### Its Definition

The land grant is that the ruler (i.e. authority) grants a piece of public land to someone that is not owned by anyone. This piece of land can be used for agriculture, planting trees, constructing buildings, private use or sale.

### Its Ruling

Giving land grants is permissible for the Muslim Ruler and no one else. For the Prophet ﷺ granted land, and after him Abu Bakr, 'Umar and others besides them did the same.<sup>[1]</sup>

### Its Regulations

(1) Only the Muslim ruler can grant a piece of land. This is because no one else has the authority to grant such a piece of public land other than him.

(2) Whoever grants such land should not grant more than what one can cultivate and revive of it.

(3) If the Muslim ruler grants a piece of uncultivated land to someone and he is unable to cultivate it, the ruler should request him to return it in order to preserve its use and benefit for the public welfare.

[1] The *Hadith* that is being referred to concerning the Prophet ﷺ was collected by Al-Bukhari and Muslim. Its wording states, "I used to carry seed kernels on my head from a piece of land that the Messenger of Allāh ﷺ had granted to Az-Zubayr and its distance was two-thirds of a *Farsakh* (i.e. approximately 2 miles) from me." The speaker in this narration is Asma' bint Abu Bakr, the wife of Az-Zubayr.

(4) The Muslim ruler can reserve and grant such space in the market places, wide open areas, and wide streets, as long as this does not cause any harm to the public. However, in either case, the user of the land would not be its real owner. Rather, he only has more right to it than others. This is due to the Messenger of Allāh's statement:

«مَنْ سَبَقَ إِلَى مَا لَمْ يَسْبِقْ إِلَيْهِ مُسْلِمٌ فَهُوَ أَحَقُّ بِهِ»

*«Whoever reached something that none of the Muslims has preceded him to, he has more right to it.»* (Abu Dawud and it was graded *Sahih* by Adh-Dhiya' in *Al-Mukhtarah*)

(5) If the ruler grants anyone a place or someone reaches a place first without it being granted by the ruler, he should not cause harm to others. For example, he should not put up veils in order to block out the light, or make barriers between buyers and sellers in order to hide others' merchandise for sale so that he can exhibit his own commodities only. The Messenger of Allāh ﷺ said:

«لَا ضَرَرَ وَلَا ضِرَارَ»

*«Do not hurt anyone and do not allow anyone to hurt you.»*

## Private Pastures

### Its Definition

The private pasture is a piece of uncultivated land that is kept protected from grazing in order to increase its grass, and thus private domestic cattle can be allowed to graze therein.

### Its Ruling

It is not permissible for anyone to use the Muslims' public land as a private pasture whether it may be a cubit of land or more. The Muslim ruler is exempt from this rule, if the pasturing of it is beneficial for the public welfare of the Muslim community.

This is due to the Messenger of Allāh's statement:

«لَا حِمَى إِلَّا لِلَّهِ وَلِرَسُولِهِ»

«There is no private pasture except that it is for Allāh and His Messenger.» (Al-Bukhari)

This *Hadith* shows that no one has the right to take an uncultivated land into a private pasture except Allāh and His Messenger ﷺ and a *Khalifah*, who is the Muslim ruler. Moreover, this *Hadith* indicates that the Muslim ruler should not use the uncultivated lands as private pastures unless it is for the best interest of the Muslim community and their welfare. This is because whatever is for Allāh and His Messenger ﷺ must be spent in the way of righteousness and well being of the public. For example, the fifth portion of the war booty, warless gained spoils, and fifth of the buried treasures. The Messenger of Allāh ﷺ designated *An-Naqi'* as a private pasture for camels and horses of *Jihad* (Al-Bukhari). Likewise, 'Umar designated a private pasture of land and when something was said to him regarding that he said, "The wealth is the wealth of Allāh and the servants are the servants of Allāh. By Allāh! By Allāh! Were I not using it in the way of Allāh, I would not have made a single hand span of the land a private pasture." (Al-Bukhari with a different wording.)

### Its Regulations

There are laws that apply to the uncultivated private pastures:

(1) No one may designate a private pasture except the Muslim *Khalifah* and their leader. This is due to the Messenger of Allāh's statement:

«لَا حِمَى إِلَّا لِلَّهِ وَلِرَسُولِهِ»

«There is no private pasture except that it is for Allāh and His Messenger.» (This *Hadith* has already preceded.)

(2) No land should be used for private pasture except if it is

uncultivated and is not owned by anyone else.

(3) The *Khalifah* should not use the private pasture for his own personal use. Rather, he should use it for the welfare of the Muslim community.

(4) That which the government designates as private pasture areas on certain mountains for the growth of forest trees is included in this ruling by analogy. This should be reviewed in detail. If it is beneficial for the public welfare of the Muslim community, the government should approve of it. If it seems to be harmful to the Muslims and of no benefit to them, the government should not approve of it. This is because there is no private uncultivated pasture except that it belongs to Allāh and His Messenger ﷺ.

## Other Dealings

### Al-Qardh (Lending and Loans)

#### Its Definition

The *Qardh* (loan) linguistically means cutting. In Islamic terminology, it means paying an amount of wealth to someone who wants to benefit from it, then he returns it to him later. For example, a needy person asks someone, whose donation is legally acceptable: "Give me such and such amount of money or commodity or animal as a loan or credit for a fixed period and I will return it to you." Therefore, he gives it him.

#### Its Ruling

Lending a loan is a recommended act for those who are able to give loans. This is due to Allāh's statement:

﴿مَنْ ذَا الَّذِي يقرض الله قرضًا حسنًا فيضاعفه له ثم وله أجر كريم﴾

«Who is he that will lend Allāh a goodly loan: then (Allāh) will increase it manifold to his credit (in repaying), and he will have (besides) a good reward (i.e. Paradise).» (57:11)

The Messenger of Allāh ﷺ said:

«مَنْ نَفَسَ عَنْ أَخِيهِ كُرْبَةً مِنْ كُرْبِ الدُّنْيَا نَفَسَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ يَوْمِ الْقِيَامَةِ»

«Whoever relieves his brother of a difficulty from the difficulties of this world, Allāh will relieve him of a difficulty from the difficulties of the Day of Resurrection.» (Muslim)

As for the one who receives a loan, it is permissible and allowed and there is no harm in it. This is because the

Messenger of Allāh ﷺ himself borrowed a virgin camel and he returned a better camel.

The Messenger of Allāh ﷺ said:

«إِنَّ مِنْ خَيْرِ النَّاسِ أَحْسَنَهُمْ قَضَاءً»

*«Verily from the best of people are those who are the best of them in repaying loans.»* (Al-Bukhari)

### **Its Conditions**

The conditions of loans are as follows:

- (1) To know the amount of the loan by measurement, weight, and quantity.
- (2) To know the description of the loan, and the age if it is an animal.
- (3) The loan should be from someone whose loan is valid. Therefore, the loan is invalid from one who does not own what is loaned, as well as from those who are immature and insane.

### **Its Regulations**

There are certain laws for lending a loan:

- (1) What is loaned is thereafter owned by possession. Whenever the receiver of the loan takes possession of it, he owns it and thus the loan will be under his obligation.
- (2) Lending a loan is permissible for a fixed term. However, it is better to lend a loan without a fixed term, due to what it contains of gentleness and kindness towards the borrower.
- (3) If the loaned article remains in the same condition that it was in on the day that the loan was received, it is returned to the lender. If it changes by a decrease or increase in it, a similar thing should be returned to him, if a similar thing is available. Otherwise, he should repay its value.

(4) If the loaned article bears no expense in carrying it, the receiver can return it to the lender wherever the latter wishes. Otherwise (if there is expense involved), the receiver of the loan has no obligation to repay it at other than its place (where he borrowed it).

(5) Any profit that the loan brings to the lender is forbidden, whether it is an increase in the loan, an improvement to it or any other benefit, which is outside of the concept of loaning. Particularly, when the lender and the receiver of the loan have made an agreement in this regard. However, if there is some benefit given to the lender simply due to an act of kindness from the borrower, there is no harm in that. This is because the Messenger of Allāh ﷺ gave a choice camel in return for a small virgin camel that he had received as a loan. Then he ﷺ said:

«إِنَّ مِنْ خَيْرِ النَّاسِ أَحْسَنَهُمْ قَضَاءً»

«Verily from the best of people are the best of them in repaying loans.» (Al-Bukhari)

## An Entrustment

### Its Definition

The entrustment refers to something that is left behind, such as money or other things, with someone who will keep it and return it to the owner whenever he requests it.

### Its Ruling

Entrustments are lawful. Allāh says:

﴿فَلْيَوِّزِ الَّذِي أُؤْتِيَ ائْتَمَتُ﴾

﴿Let the one who is entrusted, discharge his trust (faithfully).﴾  
(2:283)

He also says:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا﴾



«Verily, Allāh commands that you should render back the trusts to those whom they are due.» (4:58)

The Messenger of Allāh ﷺ said:

«أَدِّ الْأَمَانَةَ إِلَى مَنِ اتَّمَكَ، وَلَا تَخُنْ مَنْ خَانَكَ»

«Render back the trust to the one who entrusted you, and do not cheat the one who cheated you.» (Abu Dawud and At-Tirmithi, who graded it *Hasan*)

The entrustment is a kind of trust. The rule of the trust varies in different situations. Sometimes the acceptance of the trust becomes obligatory upon the Muslim. This is when the Muslim is forced to have someone store his money, and there is no one else available to keep it other than that person. Sometimes keeping someone's wealth for them is a recommended act, if the owner of it requests someone to keep it although the he is able to keep it himself. This is because such an act is considered mutual cooperation in righteousness as Allāh commands in His saying:

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ﴾

«Help you another in Al-Birr and At-Taqlwa (virtue, righteousness and piety).» (5:2)

Sometimes accepting the trust or deposit becomes disliked if one is unable to keep the money.

### Its Regulations

(1) Both the depositor and the one who keeps the trust should be among those who are responsible and mature (i.e., sane in mind, legally responsible). Therefore, it is not allowed for the child or the insane to entrust someone with something or to be entrusted.

(2) The one who keeps the trust is not a guarantor if the item is damaged without his negligence or excessiveness.

The Messenger of Allāh ﷺ said:

«لَا ضَمَانَ عَلَى مُؤْتَمَنٍ»

«There is no guarantee upon the one who is given a trust.»

(Ad-Daraqutni and there is weakness in its chain of narration.

However, the majority of scholars act according to it.)

The Messenger of Allāh ﷺ said:

«مَنْ أُوْدِعَ وَدِيعَةً فَلَا ضَمَانَ عَلَيْهِ»

«Whoever is given a trust has no obligation of guarantee upon him.» (Ibn Majah and there is weakness in its chain of narration)<sup>[1]</sup>

(3) It is permissible for the depositor to request the return of the item whenever he wants it, and as well as for the one entrusted to return it whenever he wishes.

(4) The one entrusted has no right to obtain any sort of benefit by usage of the item, except with the permission and approval of the depositor.

(5) If any dispute arises over the return of the trust, the claim of the one who keeps the deposit should be accepted by his swearing. If the depositor produces the proof claiming that the deposit had not been returned to him, then his claim should accepted.

### Recording the Deposit

#### (a) Textual Format For Recording the Deposit:

“So-and-so agrees that he has possessed and received from so-and-so such and such amount. This occurred in the manner of a legal deposit. It is obligatory upon him to keep and protect the deposit in the proper way and location according to the instructions of the depositor. The above-mentioned depositor was present and attested to this record by a legal attestation.”

[1] The meaning of this *Hadith* is that if something entrusted to someone becomes damaged or destroyed, he is not responsible for it as long as there was no negligence or destructive misuse involved.

### **(b) Textual Format for Recording the Return of the Deposit:**

“So-and-so agrees that he has possessed and received from so-and-so an amount of such and such as a legal possession. Therefore, this amount has come to him and is in his hand and possession. This amount is exactly equivalent to what he deposited with the entrusted before this date. He has not delayed anything from it, more or less. The payer also attests to this fact as a legal attestation. This has occurred on such and such date.”

## **Gratuitous Loan**

### **Its Definition**

A gratuitous loan refers to a thing that a person gives to another for his benefit for sometime and then he returns it to him. For example, a Muslim borrows a pen from another for writing or a garment for wearing, then he returns it to him after using it.

### **Its Ruling**

Giving a gratuitous loan is permissible. Allāh said:

﴿وَمُتَّاعُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ﴾

﴿Help you one another in Al-Birr and At-Taḳwa.﴾ (5:2)

Allāh said:

﴿وَيَسْتَعِينُوا الْمَاعُونَ﴾

﴿And (those who) withhold Al-Ma'un (small kindness).﴾ (107:7)

The Messenger of Allāh ﷺ said to Safwan bin Umayyah at the battle of Hunayn, when he borrowed a coat of armor from him:

﴿بَلْ عَارِيَةٌ مَّضْمُونَةٌ﴾

«Nay, it is a loan with a guarantee (of return).» (Abu Dawud,

Ahmad, and An-Nasa'i, and Al-Hakim graded it *Sahih*)

The Messenger of Allāh ﷺ said:

«مَا مِنْ صَاحِبِ إِبِلٍ وَلَا بَقَرٍ وَلَا غَنَمٍ لَا يُؤْذِي حَقَّهَا إِلَّا أُعِيدَ لَهَا يَوْمَ الْقِيَامَةِ بِقَاعٍ قَرَقَرٍ تَطْرُقُهُ ذَاتُ الظِّلْفِ بِظِلْفِهَا، وَتَنْطَحُهُ ذَاتُ الْقَرْنِ بِقَرْنِهَا، لَيْسَ فِيهَا يَوْمَئِذٍ جَمَاءٌ وَلَا مَكْسُورَةٌ الْقَرْنِ»

*«There is no owner of camels, cows or sheep, who does not give their due except that he will be made to sit at a spot of flat land for them on the Day of Resurrection. Then the ones with cloven hooves will trample him, and those with horns will butt him. There will be no lean ones or ones with broken horns among them.»*

We said, "O Messenger of Allāh! What is their due?" He replied:

«إِطْرَاقُ فَحْلِهَا، وَإِعَارَةُ ذَلِوِهَا، وَمَتْنِجَتُهَا وَحَلْبُهَا عَلَى الْمَاءِ، وَحَمْلٌ عَلَيْهَا فِي سَبِيلِ اللَّهِ»

*«Lending their males for studding, loaning out their buckets, lending them for usage, allowing them to be milked while they drink water and allowing them to be used in the way of Allāh.»*

(Al-Bukhari)

The ruling of the gratuitous loan is that it is recommended. Allāh said:

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ﴾

﴿Help you one another in Al-Birr and At-Taḳwa.﴾ (5:2)

The giving of gratuitous loan is compulsory upon one if a Muslim is compelled to borrow something from him while he himself is in no real need of it, and his Muslim brother needs it for certain.

### Its Regulations

There are certain laws concerning gratuitous loans:

(1) Only lawful things may be given as gratuitous loans. Therefore, it is not permissible to give a female slave as a gratuitous loan to be used for sexual relations. A Muslim should not be given as gratuitous loan for the service of a disbeliever. Perfume or a garment should not be given as gratuitous loan for a prohibited purpose. This is because cooperating in that which is sinful is a prohibited act. This is due to Allāh's statement:

﴿وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ﴾

«But do not help one another in sin and transgression.» (5:2)

(2) If the lender (loaner) stipulates a guarantee as a condition for his gratuitous loan, the borrower is responsible for it if he damages it. This is due to the Messenger of Allāh's statement:

«الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ»

«Muslims are bound to their contractual conditions.» (Abu Dawud and Al-Hakim)

If he did not include such a condition of guarantee and the loaned item became damaged without his negligence or excessiveness, he is not responsible for it. However, it is preferable to have a guarantee. This is due to the Messenger of Allāh's statement to one of his wives who broke a food vessel:

«طَعَامٌ بِطَعَامٍ، وَآيَةٌ بِآيَةٍ»

«Food for food and container for container.» (Al-Bukhari)

If it becomes damaged due to his negligence and excessiveness, he (the borrower) will be responsible for providing something similar to it or (paying) its value. This is due to the Messenger of Allāh's statement:

«عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ»

«The hand which takes is responsible till it renders back.» (Abu

Dawud, At-Tirmithi, and Al-Hakim, who graded it *Sahih*)

(3) The borrower is responsible for the expenditure of returning it. For example, if the loaned item cannot be carried except with the help of a laborer, or fare of a taxi. This is due to the Messenger of Allāh's statement:

«عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُرَدِّيهِ»

«The hand which takes is responsible till it renders back.»

(4) It is not permissible for a borrower to rent out what he borrowed. However, there is no problem with him letting someone else borrow the item if he is certain that the original loaner would approve of that. If he is not certain that the original owner would mind him lending it out to someone else, it is not permissible for him to do so.

(5) If a person loans a wall for placing a piece of wood (in it), for example, it is not permissible for him to take back his loan until the wall in question has collapsed. Similarly, whoever loans some land for farming, it is not permissible for him to take his land back until the crop is harvested, as this would cause harm to the Muslims, which is forbidden.

(6) If a person loans something for a fixed period, it is recommended that he not seek its return until after the fixed term expires.

### **Textual Format for Recording a Gratuitous Loan**

“So-and-so has given a gratuitous loan to so-and-so. That loan is for him, in his possession and under his control. That is the whole of such and such building, or such and such plant, or such and such garment or such and such riding animal. This is for his occupation, wearing, or riding the above-mentioned thing for a period of such and such time or for a distance of such and such. This is a valid gratuitous loan, which is lawful, guaranteed and returnable after its use when its period expires. The borrower received the same as per a legal receipt. Thus, this came into his possession and under his control according to the details

that they mutually agreed to. Both of the parties have agreed to all of the above contents as per a legal agreement. This has been registered on such and such date."

## Appropriation

### Its Definition

Appropriation is seizing or confiscating someone's property by force without any right. For example, a person seizes a house owned by others and occupies it by force or seizes a riding animal of someone and rides it.

### Its Ruling

Appropriation is forbidden according to Allāh's statement:

﴿وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ﴾

«And eat up not one another's property unjustly.» (2:188)

The Messenger of Allāh ﷺ said:

«أَلَا إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ»

«Verily your blood and your wealth are forbidden (i.e. sacred) to all of you.» (Al-Bukhari)

The Messenger of Allāh ﷺ said:

«مَنْ افْتَطَعَ مِنَ الْأَرْضِ شِبْرًا ظَلَمًا طُوْفَهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرْضِينَ»

«Whoever wrongfully takes a piece of land the size of a hand span, his neck will be bridled by seven earths on the Day of Resurrection.» (Al-Bukhari)

The Messenger of Allāh ﷺ said:

«لَا يَجُزُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا عَنْ طِبِّ نَفْسِهِ»

«It is not lawful to take the property of a Muslim unless he is himself is pleased with it.»<sup>[1]</sup>

[1] Ad-Daraqutni and it has a strong supporting narration which

### Its Regulations

The regulations of appropriation are the following:

(1) Taking disciplinary action against the usurper regarding the rights of Allāh. For example, imprisoning him or beating him as a way of rebuking him and those who are like him.

(2) It is mandatory that he return what he has usurped. If it is damaged while in his possession, he is liable for returning what is similar, if a similar thing is available, or paying its value.

(3) If a person usurps something and causes damages to the extent that it becomes useless for future benefit, he should return a similar thing. However, he can keep the thing that he damaged. If it is not possible to return a similar thing, he can return the damaged thing along with the value of its damage.

(4) If the usurped thing makes any yield or produce, such yield should also be returned to him (the true owner). For example, offspring of animals, or produce of the trees, or rent of the riding animal, etc.

(5) If that which was usurped is a land and the usurper constructs buildings on it or plants trees, it is compulsory to demolish such buildings and uproot the trees. The land must be repaired that was damaged by such building and planting. However, if he wishes, the usurper of the property may leave what he has built or planted and take its value in compensation. This is applicable only if the owner of the property is satisfied with this. This is due to the Messenger of Allāh's statement:

«لَيْسَ لِعِرْقِي ظَالِمٌ حَقٌّ»

«The labor of an unjust person has no dues (or rights).» (Abu

states, "It is not permissible for a man to take the stick of his brother without him being pleased with it." This was reported by Ibn Hibban and Al-Hakim in their *Sahîhs* on the authority of Abu Humayd from Anas.



Dawud and Ad-Daraqutni. Some of the people of knowledge act according to this *Hadith*. This was stated by At-Tirmithi.)

(6) If the usurper does business with what he usurped and earns profit, he returns it to its owner along with its profit.

(7) If the usurper and the owner dispute over the value or the description of the usurped thing, the statement of the usurper should be accepted by his swearing. This is if the owner of the usurped thing does not produce evidence against him.

(8) If anyone damages the property of someone else without the permission of its owner, its guarantee is incumbent upon him. For example, burning the object, shredding it, opening a closed door, a cage, or a tie, thus enabling whatever was inside of the house or cage to escape.

(9) If a vicious dog, whose owner is negligent in restraining him, kills and eats a person, then the owner is liable.

(10) If the animal is released to wander at night and causes damages to the crops, its owner will be liable for what it has damaged. This is due to the Messenger of Allāh's statement:

«إِنَّ عَلَى أَهْلِ الْأَمْوَالِ حِفْظَهَا بِالنَّهَارِ، وَمَا أَفْسَدَتْ بِاللَّيْلِ فَهِيَ مَضْمُونٌ عَلَيْهِمْ»

«Verily, the people of the properties should guard them (i.e., field and farms, etc) during the daytime. Whatever it (the animal) causes damages to at night, the owner of it will be liable.» (Abu Dawud, Ahmad and Ibn Majah)

(11) There is no liability for an animal without a traveler or a driver that causes damages to something. This is due to the Messenger of Allāh's statement:

«الْعَجَمَاءُ جُبَارٌ»

«The (harms) of a (wandering) beast are without remedy. »

If it is an animal that is being ridden and it causes damage with its (rear) legs, it will be a waste.

The Messenger of Allāh ﷺ said:

«رَجُلُ الْعَجَمَاءِ جُبَّارٌ، أَمَّا مَا تُلْفُهُ بِفَمِهَا أَوْ بِيَدَيْهَا، فَمَضْمُونٌ إِذَا كَانَتْ مَرْكُوبَةً»

«(The damage caused by the rear) legs of a beast is without remedy. As for damages that are caused by its mouth or front legs, then he will be liable if it is a riding animal.» (Abu Dawud and it is a defective narration.)

## Lost and Found Articles

### Its Definition

The lost article refers to an object that was found somewhere without an owner. For example, if a Muslim finds some dirhams or garments on the road and he fears that it will be lost, so he picks it up.

### Its Ruling

Picking up a lost article is a permissible act. When someone asked the Messenger of Allāh ﷺ about it, he said:

«اِعْرِفْ عِفَاصَهَا وَوِكَاءَهَا، ثُمَّ عَرَفْنَهَا سَنَةً فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا فَتَأَنَكَ»

«Note its container and its tying string. Then announce it for a year. If its owner comes (then he may claim it) and if not it is at your disposal (to use).»

When someone asked him about a stray sheep he ﷺ said:

«خُذْهَا فَبَيْ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذِّئْبِ»

«Take it, for it is either for you, your brother or the wolf.» (Al-Bukhari and Muslim)

However, it is recommended for the person who is confident of his own trustworthiness to pick up the lost article, and it is disliked for whoever is not confident of its safety with him. This is because exposing the properties of the Muslims to damage is not permissible.

### Its Regulations

The regulations for lost and found articles are as follows:

(1) If the lost article is insignificant whereas the common people are not concerned with such a thing, such as dried dates, a seed of a grape, a worn-out cloth, a whip or a staff, then there is no harm in picking it up. The person who picks such an item up can use it at once. It is neither necessary to make it known publicly, nor preserve it. This is based upon the statement of Jabir, "The Messenger of Allāh ﷺ permitted us to pick up the staff, whip, rope and similar things, and use them for personal benefit."<sup>11</sup>

(2) If the lost thing is significant and the common people have concern for it, then it is compulsory upon the person who picks it up to make it known publicly for a complete year. He should announce it at the doorsteps of mosques, public gatherings, through some printed media and mediums of broadcast. If the owner of it comes to the announcer and identifies its container or quantity, and its description, then he should hand it over to him. If a complete year expires after the announcement and none claims the found thing, the finder can use it for his personal benefit or give it in charity if he wishes. However, while he uses it, he should intend that he would be the guarantor in case the real owner of it comes to him seeking the item.

(3) It is not allowed to pick up lost articles in the *Haram* area of Makkah, unless it is feared that the lost item will be completely lost or wasted. Whoever picks up a lost thing therein, it is compulsory for him to make it known publicly as

<sup>11</sup> Ahmad and Abu Dawud, and its chain of narration has been criticized. However, the majority of the people of knowledge act according to it. Yet, it contradicts the *Hadith* that states, "Whoever picks up an insignificant lost item, such as a rope, a dirham or something similar to that, then let him announce it for three days. If the item is something more significant than that, then let him announce it for a year."

long as he is in the *Haram* area. If the person who picked it up wants to go out of the *Haram* area, he must submit it to the authority and he has no right to possess or own it in anyway. This is due to the Messenger of Allāh's statement:

«إِنَّ هَذَا الْبَلَدَ حَرَامٌ، لَا يُغْضَدُ شَوْكُهُ، وَلَا يُخْتَلَى خَلَاهُ، وَلَا يُنْقَرُ صَيْدُهُ، وَلَا تُلْتَقَطُ لُقَطَتُهُ إِلَّا لِمُعْرُبٍ»

*«Verily this land is sacred. Its shrubs should not be uprooted, its grass should not be plucked, its game animals should not be chased and its lost items should not be picked up, except by one who will announce them.»*

(4) It is permissible to pick it up a lost or stray sheep in a desolate desert area, it may be used at once for the benefit of the one who found it.

The Messenger of Allāh ﷺ said:

«هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذِّئْبِ»

*«It is for you or your brother or the wolf.»* (See earlier)

If the stray animal is a camel, it is not permissible to take it under any circumstance, as the Messenger of Allāh ﷺ said:

«مَا لَكَ وَلَهَا، مَعَهَا حِذَاؤُهَا وَسِقَاؤُهَا، تَرِدُ الْمَاءَ وَتَأْكُلُ الشَّجَرَ حَتَّى يَجِيءَ صَاحِبُهَا فَيَأْخُذَهَا»

*«What do you have to do with it? It has its shoes and its drink. It carries water and eats the trees until its owner comes and takes it.»* (Al-Bukhari and Muslim)

Stray donkeys, mules and horses are similar to the lost camel in ruling. These animals are called *Al-Hawamil* (those that are left unattended). Hence, it is not permissible to pick them up.

### Textual Format for Registering the Lost Articles

“So-and-so agrees that on the day of such and such, in the month of such and such, he found at such and such place

a bag that contained such and such things. He made it known at once at the time it was found, and he announced it at the same spot, in the market places, streets, and mosques. He announced it on successive days, consecutive *Jumu'ahs* (Fridays) and over continuous months. He did this for more than a year. However, no one has claimed the lost item in question and he fears that he may die. Therefore, I bear witness that he found the lost thing and picked it up. It is in his possession and under his control. However, if its original owner comes later claiming it and demanding it, and it is confirmed that he is truly its owner, then he takes it, and the responsibility of the person who picked it up will end. He is free of it upon handing it over to its real owner in a legal manner. This is recorded on such and such date."

## **Lost Children**

### **Its Definition**

The lost child refers here to an abandoned baby discarded in a place where its lineage (family relationship) is unknown and no one claims it.

### **Its Ruling**

It is a collective obligation (upon the community) to take custody of the abandoned baby and look after it. This is due to Allāh's statement:

﴿وَسَامُوا عَلَى الْبِرِّ وَالْتَّقْوَىٰ﴾

﴿And help you one another in Al-Birr and At-Taqwa (virtuousness, righteousness etc).﴾ (5:2)

Also, because such a child is a respected soul (person) whom it is obligatory to care for and protect.

### **Its Regulations**

The laws of the lost child are as follows:

(1) It is necessary for whoever finds the lost child to take witnesses concerning it and any belongings that were found along with him, such as goods or wealth.

(2) If the lost child is found in an Islamic country, he (the child) will be considered a Muslim, even if non-Muslims may be residing therein.

(3) If any money is found along with the abandoned child, it should be spent upon him. If no money is found with him, his expenditure will be from the public treasury of Muslims. Otherwise, his expenses will be obligatory upon the Muslim community collectively.

(4) If the lost child dies or is killed, his inheritance or his blood money will belong to the public treasury of Muslims. The Muslim leader (Imam) is his guardian in the matters of retaliation and blood money. If he wishes he may demand retaliation on the child's behalf or he may take the payment of blood money for the public treasury.

(5) If a man claims the lost child to be his, it should be returned to him if it is possibly his child in truth. Similarly, if a woman claims that it is her child, it should be returned to her.

### **Textual Format for Recording the Discovery of a Lost Child**

"So-and-so calls to witness the fact that at such and such time he was passing by such and such place and he found a baby abandoned there on the ground. Its description is such and such. This is a lost child and the finder has no rightful ownership of it or anything like ownership of it or any right that leads to his custody. The child remains in his custody according to the laws regarding lost articles, and according to the above-mentioned details. He understands the right of this, and he accepts it and the truth, and he follows it due to its obligation upon him by the religious law. He calls others to witness over this on such and such date."

## Interdiction

### Its Definition

Interdiction refers to preventing a person from transactions with his wealth because he is a minor, insane, foolish or bankrupt.

### Its Ruling

Interdiction is legitimate according to the statement of Allāh:

﴿وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ﴾

*﴿And give not unto the foolish your property which Allāh has made a means of support for you, but feed and clothe them therewith.﴾ (4:5)*

It is also proven by the action of the Messenger ﷺ, when he ﷺ interdicted the property of Mu'adh and sold it in return for a debt that he was indebted for, until Mua'dh had nothing left (of debt). (Ad-Daraqutni and Al-Hakim, who graded it *Sahih*.)

### Laws concerning those who have been interdicted

(1) The Minor: It is a child, who has not reached the age of puberty. The law concerning him is that his financial transaction is not permissible unless approved by his parents or his guardian, if he is an orphan. Interdiction continues in his case until he reaches the age of puberty, as long as he does not appear to be foolish even after puberty. If he appears to be foolish after puberty, the state of interdiction will continue until his competence becomes obvious. If he is an orphan with a guardian over him, the state of interdiction will remain effective until he proves to be of sound judgment after reaching the age of puberty. Allāh said:

﴿وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ﴾

«And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgement in them, release their property to them.» (4:6)

(2) The Foolish: The foolish is one who spends his wealth foolishly, spending it on lustful desires or ill transactions due to his lack of awareness of what is beneficial for him. Therefore, interdiction is imposed upon him by a request from his heirs. Thus, he should be prevented from any dealing with his wealth, such as giving a gift, selling and buying until he proves his sound judgment. Once interdiction is imposed on him, his dealings are nullified and such transactions should not be implemented. If he made any transaction before interdiction, it is valid and executed.

(3) Insane person: The insane person is a person whose mind is disrupted and its grasping power is unsound. Therefore, interdiction should be imposed upon him, and his transactions should not be implemented until he is cured completely and his complete intellect returns to him. This is due to the Messenger of Allāh's statement:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الْمَجْنُونِ الْمَغْلُوبِ عَلَىٰ عَقْلِهِ حَتَّىٰ يَبْرَأَ، وَعَنِ النَّائِمِ حَتَّىٰ يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّىٰ يَحْتَلِمَ»

«The Pen has been lifted from (the recording of sins against) three persons: An insane person whose intellect is impaired until he is cured; a sleeping person until he wakes up; and a child until he reaches to the age of puberty.» (Ahmad and Abu Dawud, and it is Sahih)

(4) The Sick Person: The sick person is one who contracts an illness that normally causes death. In this case, his heirs have the right to seek his interdiction. So he is prevented from spending on anything other than basic necessities, like food, drink, clothing, housing and medicine until he is either cured or until he dies.



**Textual Format to Record an Interdiction upon a Foolish Spendthrift**

In the Name of Allāh. All praise is Allāh's.

"This is to certify that so-and-so court judge has interdicted so-and-so through a valid, legal interdiction. He has barred him from any dealing with property possessed by him at present as well as in the future. His property dealing has been prevented because of the clear evidence that the above-mentioned has become foolish. He destroys his wealth, wasting it, and is extravagant in spending, selling and purchase of properties. Therefore, he deserves that interdiction be imposed upon him and that he be prevented from dealing with his property until his condition is corrected, his soundness in reason is confirmed, and he appears capable of dealing with his wealth. Therefore, it is of benefit at this point to impose interdiction upon him and nullify his dealings.

Thus, the judge has ruled that interdiction is to be imposed on the above-mentioned and he is to be prevented from any transaction. Moreover, the judge has declared him to be legally foolish and banned him from any dealings. The judge has also ruled that his action in every transaction is legally invalid.

He has been allowed to spend from his wealth on whatever is essentially required for daily life and on those whom he is obliged to care for, such as his wife and small children, who are so-and-so and so-and-so. This expense is for their daily essential requirements from such and such date. The judge has obligated that they be allowed this expenditure from his wealth, as a legal obligation. This is after it was confirmed with him, by legal evidence, that he has received enough for himself and those who are with him. It has also been legally confirmed that he does not possess anything more than what suffices him. This valid and legal documentation has been concluded on such and such date."

## Bankruptcy

### Its Definition

It is when a man is completely in debt such that his wealth will not be adequate to cover his debts.

### Its Regulations

There are certain rules for bankruptcy:

- (1) It should be interdicted if the creditors, to whom he owes the debts, demand so.
- (2) All his belongings should be sold except for his clothes and daily essentials, such as his food and drink. Then the value should be divided among the creditors according to their debts.
- (3) If anyone of the creditors finds his commodity with the man in its original form, he can take it personally rather than others taking it. This is due to the Messenger of Allāh's statement:

«مَنْ أَدْرَكَ مَتَاعَهُ بِعَيْنَيْهِ عِنْدَ إِنْسَانٍ قَدْ أَفْلَسَ فَهُوَ أَحَقُّ بِهِ»

*«Whoever finds his possession with a person who has gone bankrupt, he has the most right to it.» (Al-Bukhari and Muslim)*

This is under the condition that he should not have received any portion of its value. Otherwise, he will be equal to other creditors.

- (4) Whoever's straitened circumstance is proved before the authority, meaning that he has no money or commodity for selling to repay his debt, then it is not permissible to demand him to pay the debt or pursue him concerning it. This is due to Allāh's statement:

«وَإِنْ كَانَتْ دُورُ عُسْرِهِ فَنَظَرُهُ إِنْ مَيَّسَرَهُ»

«And if the debtor is in a hard time (has no money), then grant him time till it is easy for him to repay.» (2:280)

The Messenger of Allāh ﷺ said to the creditors of one of the debtors from the Companions:

«خُذُوا مَا وَجَدْتُمْ وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ»

«Take what you can find, and you have no right to anything other than that.» (Muslim)

(5) If a new creditor appears after the division of the property, and he was not aware of any interdiction or selling of the property of the interdicted person, he has to refer to the other creditors in order to obtain his share of debt from them.

(6) Whoever knows about the interdiction imposed upon a debtor and he makes a transaction with him thereafter, he has no right to refer to other creditors to obtain his share of debt. Rather, his debt will remain under the obligation of the bankrupt person until he is able to easily repay it.

### **Textual Format for Recording an Interdiction on the Bankrupt Person**

In the Name of Allāh. All praises are due to Allāh.

“This is to certify that so-and-so court judge bears witness that he has interdicted so-and-so through a valid, legal interdiction. He has barred him from any dealing with his property that he presently possesses, as well as what he may possess in the future. He has been completely prohibited from dealings by a judgement that is based upon what is confirmed that he owes of obligatory legal debts that he is responsible for repaying to the creditors of such debts. The debts that he owes to the creditors are more than his property. His total debts are such and such amount with the following details. The property of so-and-so is such and such amount against the receipt voucher, dated such and such. He owes the amount of such and such to so-and-so person. Every creditor has proved his

debt before the court, according to the valid legal documentation. All of them have sworn an oath concerning this matter.

After deliberation of the legal proceedings and valid proofs, the court has concluded that the above-mentioned debtor is in financially difficult circumstances and unable to repay the above-detailed debts. Moreover, whatever he possesses is not adequate to clear his debt. However, whatever he possesses will be divided according to each creditor's share. Therefore, this court declares his bankruptcy and imposes an interdiction on his property, legally and officially.

Meanwhile, he is allowed to spend from his wealth on whatever is essentially required for him. Similarly, he is also exempt regarding whomever he is obliged to care for, such as his wife and children, who are so-and-so and so-and-so. This likewise excludes expenses for their daily foods, drinks and essential requirements. This interdiction and sale of his property will continue until his property and belongings sell out completely and its value is distributed among the creditors according to their shares of debt. This legal document is recorded on such and such date."

## **Will or Bequeathal**

### **Its Definition**

The will or bequeathal is a covenant to look after something or to donate some wealth after the death of the one who made it. According to this definition there are two types of bequeathals. The first is a bequeathal to a person who will clear a debt, or render a right, or look after the children of the deceased until they reach the age of puberty. The second is a bequeathal regarding what should be spent on a particular thing.

### **Its Ruling**

Making a will or bequeathal is a legitimate act. This is due

to Allāh's statement:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا شَهِدُوا بَيْنَكُمْ إِذَا حَضَرَ أَحَدُكُمْ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِّنكُمْ﴾

«O you who believe! When death approaches any of you, and you make a bequest, (then take) the testimony of two just men of your own folk.» (5:106)

Allāh also said:

﴿مِن بَعْدِ وَصِيَّتِهِ يُوصِيكَ بِهَا أَوْ دَيْنٌ﴾

«(The distribution in all cases is) after the payment of legacies he may have bequeathed or debts.» (4:11)

The Messenger of Allāh ﷺ said:

«مَا حَقُّ امْرِئٍ مُّسْلِمٍ لَهُ مَا يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ»

«It is not the right of a Muslim man who has that which he may bequeath to spend two nights except that his will is written down with him.» (Al-Bukhari and Muslim)

It is incumbent upon whoever owes a debt, or has a trust to leave, or who owes some rights, to leave a will. This is due to fear that he may die and the wealth of the people and their rights may be lost, for which he will be questioned (i.e. held responsible) on the Day of Resurrection.

Likewise, it is recommended for whoever owns a lot of wealth and whose inheritors are wealthy to will one-third or less of his wealth to his relatives who are not inheritors or to any good cause. This is due to what has been reported from the Prophet ﷺ that he said:

«يَقُولُ اللَّهُ تَعَالَى: يَا ابْنَ آدَمَ إِنَّتَانِ لَمْ يَكُنْ لَكَ وَاحِدَةٌ مِّنْهُمَا: جَعَلْتُ لَكَ نَصِيبًا فِي مَالِكَ حِينَ أَخَذْتُ بِكَ ظَمِيمَكَ لِأَطْهَرَكَ بِهِ وَأَرْكَبِيكَ، وَصَلَاةَ عِبَادِي عَلَيْكَ بَعْدَ انْقِضَاءِ أَجَلِكَ»

«Allāh the Exalted says, 'O son of Adam! There are two things that you do not possess a single one of them (in this life). I made for you a portion of your wealth for when I seize you by your throat (upon the soul's leaving the body), so that I could cleanse you and purify you with it. And the prayer of my servants over you after your time has expired.'» (Abd bin Humayd in his *Musnad* with a *Sahih* chain of narration.)

Also, there is the Messenger of Allāh's statement to Sa'd bin Abi Waqqas, when the latter asked him about the will:

«الثُلُثُ، وَالثُلُثُ كَثِيرٌ، إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدْعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ»

«A third, and a third is a lot. Verily it is better if you leave your inheritors wealthy than if you leave them poor and with their palms out begging from the people.» (Al-Bukhari and Muslim)

### Its Conditions

The following are the conditions of the bequeathal:

- (1) It is conditional upon a person who is requested in a will to look after something that he should be a Muslim, sound in mind, and mature. This is because with those who do not meet these criteria, there is no guarantee that they will not be careless with that which they have been left in charge of. For example, fulfilling the rights of others or looking after children.
- (2) It is a condition on the sick person that he be of sound mind, rational, and the owner of what he bequeaths.
- (3) It is a condition on the bequeathed thing that it should be a permissible thing. Therefore, a will that is made concerning something forbidden should not be implemented. For example, if a person makes a will for wailing over him after his death, or giving money to a church, or to a reprehensible innovative matter, or to a gathering place for wicked pastimes or evil.

(4) It is a condition on the person who is willed something to accept what has been willed. If he refuses it, the will is nullified, and he will not have any right to it thereafter.

### Its Regulations

The laws of bequeathal are as follows:

(1) It is permissible for someone to reconsider his will or change it however he wishes. This is due to the statement of 'Umar, "A man can change whatever he likes of his will."

(2) It is not permissible for whoever has heirs to bequeath more than a third of his wealth. This is due to the Prophet's statement to Sa'd when he said, "Should I give two thirds of my wealth away in charity?" The Prophet ﷺ said:

«يَ»

«No.»

Sa'd then said, "Then half, O Messenger of Allāh?" He replied:

«يَ»

«No.»

Sa'd said, "Then a third?" The Prophet ﷺ replied:

«الثُلُثُ، وَالثُلُثُ كَثِيرٌ، إِنَّكَ أَنْ نَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدْعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ»

*«A third, and a third is a lot. Verily it is better if you leave your inheritors wealthy than if you leave them poor and with their palms out begging from the people.»* (Al-Bukhari and Muslim)

(3) It is not permissible to bequeath something to one's heir, even if it is a small amount, unless the rest of the heirs consent to it after the testator's death. The Messenger of Allāh ﷺ said:

«إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ، فَلَا وَصِيَّةَ لِرِوَارِثٍ إِلَّا أَنْ يَشَاءَ الْوَرِثَةُ»

«Allāh has given everyone who has a right what is due to him. Therefore, there is no bequeathal to an heir unless the other heirs wish so.» (At-Tirmithi, who graded it *Sahih*.)

(4) In case the one-third did not cover all of the bequeathals in the will, it should be divided equally over the different recipients like the sharing of the debtors.

(5) The will should not be implemented unless the debts of the deceased have been paid. This is due to the statement of 'Ali, "The Messenger of Allāh ﷺ ruled that the debts (of the deceased) be paid before implementing the will." (At-Tirmithi and there is weakness in its chain of narration. At-Tirmithi said concerning it, "Verily the people of knowledge act according to it.") This is because repaying the debt is obligatory, while a bequeathal is a supererogatory act of giving, and the obligatory things are given precedence over voluntary things.

(6) The will is valid if it is something unknown or nonexistent, for it is a donation and an act of kindness. In case such is present, then that is good and the bequeathal is carried out, and if it is not available, then there is no harm. For example, a person makes a bequeathal of the offspring of his sheep or whatever yields his trees produce.

(7) It is valid to accept the bequest during the lifetime of the testator or after his death. Likewise, it is the right of the testator to withdraw his bequeathal as long as he fears that what he is bequeathing may be wasted, such as wealth, rights or (rights of) orphan.

(8) Whoever is given a bequeathal concerning something specific, it is not permissible for him to use it for something else, as he has no permission to do so. This is because dealing with the rights of people without their permission is not valid in Islam.

(9) If any debt appears after implementing the will of the



deceased, the person who received the bequeathal will not be responsible for such debt. This is because he was not aware of such while ignoring it, nor did he neglect that for which he was made responsible.

(10) If someone bequeaths something specific, then the bequeathed property becomes damaged, the will becomes invalid and he (the testator) is not responsible for replacing it from his other wealth.

(11) If someone wills a bequeathal to one of his inheritors, then some of the heirs allow implementing the will, while the others do not allow it, the share of the will that they allowed will be implemented. The share of those who do not allow such bequeathal will not be carried out. This is due to the Messenger of Allāh's statement:

«إِلَّا أَنْ يَشَاءَ الْوَرَثَةُ»

*«unless the other heirs wish so.»*

(12) If one makes a will saying, "I have bequeathed such and such to the children of so-and-so," those who are recipients should implement it giving the males and females equally. For the word children includes both genders. This is due to Allāh's statement:

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلَّذِي مِثْلُ حَظِّ الْأُنثَيَيْنِ﴾

*«Allāh commands you as regards your children's (inheritance): to the male a portion equal to that of two females.» (4:11)*

Likewise, if one makes a will saying, "I have bequeathed such and such to the male children of so-and-so." Therefore, the will should be implemented by giving to the male children, excluding the females. Whoever says, "I have bequeathed such and such to the female children of so-and-so," then the bequeathal is for the females only.

(13) Whoever writes a will without it being witnessed, it is permissible as long as it is not known that he retracted it, in which case it would be nullified and not implemented.

### Textual Format for Recording a Will

In the Name of Allāh. All praises are due to Allāh.

"This is a will that so-and-so the son of so-and-so has bequeathed. Its witnesses are confident of his soundness in mind and the firmness of his comprehension. He bears witness that none has the right to be worshipped but Allāh alone, Who has no partner, and that Muhammad is His servant and Messenger. He believes that Paradise is true, the Hell-fire is true, and that the Last Hour is approaching and there is no doubt about it. And verily Allāh will resurrect those who are in the graves. The testator advises his children, family and his close relatives to have fear (*Taqwa*) of Allāh and to obey Him. He advises them to adhere to the Islamic *Shari'ah*, to establish the religion of Islam, and to die upon Islam. Also he (may Allāh forgive him and have mercy upon him) wills that when death comes to him, which Allāh has written compulsorily upon every creature, his inheritance should be carried out. It should first be spent upon whatever is required for the preparation of his funeral, shroud and burial. Thereafter his legal debts, for which he is obligated, should be paid from it. Such debts should be legally proven before the witnesses that he owes so-and-so such and such. He gives out one-third of his wealth to so-and-so. Then, the rest of the wealth should be divided among his heirs, who are so-and-so and so-and-so. This should be done according to the division that was ordained by Allāh.

He wills that his small children, whose names are so-and-so and so-and-so, should be looked after by so-and-so. He must save their shares from the inheritance until they reach the age of puberty, being sane and rational. He wills all of this to him and puts reliance upon him after trusting in Allāh. This is because he knows him to be a religious, trustworthy, just and capable man. Moreover, he gives him

the right to put them under the care of whomever he wishes and bequeath them to whomever he likes. The above-mentioned recipient accepts the will at the same spot where it was made and before the witnesses. This is a legal acceptance and the two parties have taken witnesses over them concerning it. Thus, it has been signed after being reviewed and read on such and such date."

## The Endowment

### Its Definition

The endowment refers to maintaining original property. Therefore, it should not be inherited, sold or given away as a gift. Its yield should spent in charity on those for whom it was given as an endowment.

### Its Ruling

An endowment is a recommended act. Allāh encouraged it by saying:

﴿إِلَّا أَنْ تَقْعَلُوا إِلَيَّ أَوْلِيَّاءَكُمْ مَعْرُوفًا﴾

﴿Except that you do kindness to those brothers.﴾ (33:6)

The Messenger of Allāh ﷺ said:

«إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ أَسْيَاءَ: صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ»

«When a man dies his actions are cut off, except for three things: charity whose benefit is continuous, knowledge from which benefit continues to be reaped, or the supplication of a righteous child (for him).» (Muslim and the Sunan compilers, except for Ibn Majah)

The endowment of houses, lands, mosques, and other things, is included among acts of charity, whose benefit is continuous.

**Its Conditions**

The following are conditions for the validity of an endowment

(1) The donor of the endowment should be qualified to make donations. This means that he should be of sound mind and the owner of what he endows.

(2) The person who is granted an endowment should be one whose ownership is considered valid, if it is a specific person. Therefore, one should not make an endowment for a fetus that is still in the womb, or the slave still owned by its master. If the endowment was not made for a specific person, it is a condition that the endowment should be made for something that is acceptable for devotion to Allāh. Therefore, making an endowment is invalid for vain pastimes of amusement, a church, or anything forbidden.

(3) Making an endowment should be with clear terms, like (saying) endowment, donation or charity.

(4) The endowed thing should be existing even after using its benefit. For example, buildings, lands and related things. As for such things that will be non-existent after their usage, like foods, perfume, and similar things, such are not valid for endowment. These are not called endowments; rather they are considered a charity.

**Its Regulations**

The following are the laws of endowment:

(1) Making endowment upon children is valid. If a donor of an endowment says, "I have endowed on my children," this terminology includes both the male and females. Likewise, if he specifically mentioned the male children, the females would be excluded. If he says, "I have endowed on my children and their offspring," this will include the male and female children and their children together.

If he says, "I have endowed on my male children," this will be exclusively for the males and not for the female children.

It is the same in case of the female children, which will not be for the males.

All of this is if it is understood that there is some difference in the context of these words. Otherwise, there is no consideration given to its wording.

(2) The implementation of the endowment should be according to the terms, description, advance, or delay that the donor has specified. If he says, "I have endowed on a scholar of *Hadith* or *Fiqh*," such endowment cannot be used for any other scholar, like a grammarian or a scholar of poetry or any other. It will be similar if he says, "I have endowed on my children, then their children, then their children." If he says, "The upper category (i.e. children) will prevent the lower category (i.e. children's children)." Then it will be according to what he said. Therefore, the members of the lower category are not eligible for any rights in the endowment as long as the upper category exists. If he made a will for three brothers and one of them died leaving behind his children, his children will not have any share in the endowment. Rather it will belong to his other two brothers. This will apply if the donor of the endowment put a condition that the lower category will not have any rights as long as the upper category exists.

(3) The endowment will be obligatory simply by being announced, being assumed, or submitting it to the endowed. Therefore, abrogating it, selling it, or giving it as a gift is not permissible after that.

(4) If the benefits of the endowment are lost due to damage, some of the people of knowledge have permitted selling it and using its price to buy something similar to it. If anything is left (of money) after selling it, it should be used for a mosque or given in charity to the poor and needy people.

### **Textual Format for Recording an Endowment**

In the Name of Allāh. All praises are due to Allāh.

"I bear witness that so-and-so has received an endowment and donation of the following property. After this it will be under his control, possession and disposition. It is designated specifically for him until this endowment is issued and confirmed, as per such and such reference number. It is transferred to him through the inheritance from his father. Its total borders are such and such. This is a valid and legal endowment and a clear donation of the property. Therefore, it may not be sold, given as a gift, nor as inheritance, security collateral, nor owned. It should not be exchanged, except for something like it in its place when its benefits no longer exist. This should only be done seeking the Pleasure of Allāh and in veneration of the sanctities of Allāh. The passing of time will not invalidate it. No difference of the times will cause it to weaken. Whenever a time period passes by it, it will be more confirmed. The more time that passes it the more apparent and more stable it will be.

The donor of the endowment (may Allāh bring goodness from him), who is so-and-so, has made this endowment for such and such purpose. The supervisor in this endowment and the trustee of the revenue of the endowment will use it for the renovation, repair and maintenance of the endowment, so that the item itself remains intact and fulfills the goal of its donor. Whatever is left over should be spent for its specified expenditures as mentioned above, and they are such and such. This endowment shall last forever and for all times until Allāh inherits the earth and whoever is on it, for He is the best of the inheritors.

When the means of the endowment cease and the concerned parties can no longer maintain it, the endowment should go to the needy and poor from the *Ummah* of the Prophet Muhammad ﷺ.

The donor of the endowment has made a condition that he will look after his endowment and supervise it during his lifetime. He will take care of it alone with no partners.

Therefore, none can dispute with him in this regard. He has the right to give it as a bequeathal and hand it over to anyone he wishes. He can transfer its supervision to his son, so-and-so, after his death or to the most responsible person from his children, descendants and offspring, who are qualified to maintain the above-mentioned endowment. If the last of them expires then the supervision will go to so-and-so.

The donor of the endowment has made a condition that this endowment should not be rented out nor anything of it for more than a year. The person who rents it out should not give it to another renter by contract until the first rental contract's period expires and the rented object has been returned to the supervisor of the endowment and is under his control.

The donor of the endowment has produced this donation from his ownership. He has taken it from his property. The mentioned endowment is a definite, absolute, continuous charity forever, according to the above-explained Islamic ruling. He has lifted his control and possession from it by every means and paved the way for the custodian of it in order for him to supervise it.

The process of this endowment has been completed and it must be implemented and carried out in accordance with its ruling. This is purely an endowment belonging to the Muslims.

None has the right to breach this endowment, change it, or cause any damages or faults to it. No one can get an Islamic Legal Ruling (*Fatwa*), seek consultation, or use any ruse against this endowment. The donor seeks the help of Allāh against anyone who intends to ruin or transgress against his endowment. He will call such a person to trial and will dispute against him before Him (Allāh) on the Day that every person will be needy and dependent on Him with humiliation and misery."

## The Gift

### Its Definition

The gift refers to a donation of a right-minded person of wealth or a lawful commodity he owns. For example, a Muslim donates a house, garments, or food to another person, or he gives him some dinars and dirhams.

### Its Ruling

The gift is like a present, as they are both recommended. Both are virtuous acts that are encouraged to be done and in a competitive manner. Allāh said:

﴿لَنْ نَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا نَحِبُّونَ﴾

«By no means shall you attain Al-Birr (piety, righteousness), unless you spend (in Allāh's cause) of that which you love.»  
(3:92)

Allāh said:

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ﴾

«And help you one another in Al-Birr and At-Taqla.» (5:2)

Allāh said:

﴿وَأَنَّىٰ الْمَالُ عَلٰى حُبِّهِ ذَوٰى الْقُرْبٰى﴾

«And gives his wealth, in spite of love for it, to the kinfolk.»  
(2:177)

The Messenger of Allāh ﷺ said:

«تَهَادَوْا تَحَابُّوْا، وَتَصَافَحُوْا يَذْهَبِ الْغِلُّ عَنْكُمْ»

«Give presents to one another, and you will love one another, and shake hands with one another so rancor will vanish from you.» (Ibn 'Asakir with a Hasan chain of narration)

The Messenger of Allāh ﷺ said:



«الْعَائِدُ فِي هَبِّهِ كَالْعَائِدِ فِي قَيْهِ»

*«The person who takes back his gift is like one who eats his vomit.»* (Al-Bukhari and Muslim)

‘A’ishah said, “The Prophet ﷺ used to accept gifts and give something in return.” (Al-Bukhari)

The Messenger of Allāh ﷺ said:

«مَنْ سَرَّهُ أَنْ يُبْسَطَ لَهُ فِي رِزْقِهِ وَأَنْ يُنْسَأَ لَهُ فِي أَثَرِهِ فَلْيَصِلْ رَجَمَهُ»

*«Whoever would be pleased to have his sustenance increased and his life span prolonged, let him keep good relations with his relatives.»* (Al-Bukhari)

### **Its Conditions**

The following are the conditions of the gift:

#### **(1) Offer**

This is the reply of the one who asks him for something and he gives it to him from his own free pleasure.

#### **(2) Acceptance**

This is that the person who is given the gift says, “I accept what you have given me.” It could also be his taking it with his hand in order to possess it. If a Muslim gives a donation or a gift to someone, but the recipient did not possess it until the donor died, it will become the right of the heirs of the deceased. Therefore, the recipient has no right to the gift in question, due to the absence of the condition of acceptance, for if he accepted it he would have possessed it by any means.

### **Its Regulations**

The following are the laws of gift giving:

(1) If the gift is given to anyone of the children, it is preferable to give similar to it to the rest of the children as well. This is due to the Messenger of Allāh’s statement:

«اتَّقُوا اللَّهَ، وَاعْدِلُوا فِي أَوْلَادِكُمْ»

«Fear Allāh and be just (i.e. fair) regarding your children.»  
(Al-Bukhari and Muslim)

(2) Taking back the given gift is a prohibited act. This is due to the Messenger of Allāh's statement:

«الْعَائِدُ فِي هَبِّهِ كَالْعَائِدِ فِي قَيْئِهِ»

«The person who takes back his gift is like the one who eats his own vomit.» (Al-Bukhari and Muslim)

However, there is an exception if the gift is from a father to his child. The father has the right to take back what he has given as a gift to his child, since the child and whatever he has belongs to his father. The Messenger of Allāh ﷺ said:

«لَا يَجُزُّ لِلرَّجُلِ أَنْ يُعْطِيَ الْعَطِيَّةَ فَيَرْجِعَ فِيهَا إِلَّا الْوَالِدَ فِيمَا يُعْطِي لَوْلَدِهِ»

«It is not lawful for a man to give a gift and then take it back, except a father regarding what he gives his child.» (At-Tirmithi, who graded it *Sahih*.)

(3) It is disliked to give a gift for some reward in return. This is that a Muslim gives a gift to another in order to receive more benefit in return. This is due to Allāh's saying:

﴿وَمَا آتَيْتُم مِّن رَّبًّا لِّرَبِّوًّا فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُوا عِنْدَ اللَّهِ وَمَا آتَيْتُم مِّن ذَكَوْرٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَٰئِكَ هُمُ الْمُضْعِفُونَ﴾

«And that which you give as a gift (to others), in order that it may increase (your wealth by expecting to get a better one in return) from other people's property, has no increase with Allāh; but that which you give in Zakah seeking Allāh's Face, then those, they shall have manifold increase.» (30:39)

The person who is given a gift has the right to accept it or reject it. If he accepts, he must give him in return a similar thing or more. This is due to 'A'ishah's saying, "The Prophet ﷺ used to accept gifts and give something in return." (Al-

Bukhari)

The Messenger of Allāh ﷺ said:

«مَنْ صَنَعَ إِلَيْكُمْ مَعْرُوفًا فَكَافِئُوهُ»

*«Whoever gives you a favor, reciprocate him with something in return.»* (Ad-Daylami)

The Messenger of Allāh ﷺ said:

«مَنْ صُنِعَ إِلَيْهِ مَعْرُوفٌ فَقَالَ لِفَاعِلِهِ: جَزَاكَ اللَّهُ خَيْرًا فَقَدْ أَبْلَغَ فِي الثَّنَاءِ»

*«He who is done a favor by another and says to his benefactor, 'May Allāh reward you with good,' he indeed commended (the benefactor) satisfactorily.»* (An-Nasa'i, Ibn Hibban and others, and its chain of narration is *Sahih*)

### **Textual Format for Recording the Gift**

In the Name of Allāh. All praises are due to Allāh.

“So-and-so, who is mature and right-minded, has given a gift to so-and-so. He is in sound health and qualified for dealing. The gift is the entirety of such and such place, whose boundaries are such and such. Both the giver and the receiver are familiar with Islamic Law. The giver has given it as a legal gift without any compensation or return. It contains both offer and acceptance. The donor has separated it from the will. The receiver can make a legal relinquishment. Then it must be possessed thereof, and the above-mentioned gift will be a part of his property under his rightful possession. This is recorded on such and such date.”

### **Note:**

If the gift was given from the father to his child it should be added by saying, “The donor has accepted the above-mentioned gift as a gift to his previously-mentioned child being a legal receipt. Therefore, the above gift will become a possession of his small child, being his right. It will remain under the control of the above father and in his possession,

being a property of his child. This is recorded on such and such date."

## **A Gift for the Life Span of the Recipient**

### **Its Definition**

This refers to the saying of a Muslim to his brother, "I give you my residence or gardens for life." Or he says, "I give you the accommodation of my house, or yields of my gardens as long as you live, or for the length of your life."

### **Its Ruling**

Giving a gift for the life span of the recipient is permissible. This is due to the statement of Jabir, "Verily the gift for life that the Messenger of Allāh ﷺ permitted was that a man says, 'It belongs to you and your descendents.' However, if the man says, 'It belongs to you as long as you live,' then it is returned to its original owner (upon the recipients death)." (Muslim)

### **Its Regulations**

The following are the laws of the donation for life:

(1) If one uses the wording, "I have given you this house for as long as you live," it will belong to the giver and his children after him.

The Messenger of Allāh ﷺ said:

«الْعُمْرَى لِمَنْ وَهَبَتْ لَهُ»

*"The lifelong gift is for whomever it was given to (i.e. and not any of his relatives or descendants)." (Al-Bukhari and Muslim)*

If he specifically says "It is for you and for your children after you," then, it will belong to him and to his children after him, and it will not return to the giver's possession in any way. The Messenger of Allāh ﷺ said:

«أَيُّمَا رَجُلٍ أُعْمِرَ عُمْرَى لَهُ وَلِعَقِبِهِ، فَإِنَّهَا لِلَّذِي أُعْطِيَهَا لَا تَرْجِعُ إِلَى الَّذِي

أَعْطَا، لِأَنَّهُ أُعْطِيَ عَطَاءً وَقَعَتْ فِيهِ الْمَوَارِثُ

«Whoever is given a gift for life for him and his descendants, such gift will belong to him and it should not be returned to the giver, for he has given a gift, which shall be included in the inheritance.» (Abu Dawud, An-Nasa'i and At-Tirmithi, who graded it *Sahih*)

(2) If he says conditionally, "It is for you as long as you live, and if you die it will return to me or to my offspring after me," then it will return to the giver after the recipient's death. This is due to Jabir's statement, "The donation for life that the Messenger of Allāh ﷺ has permitted was a person's saying, 'It is for you and for your descendants.' If he says, 'It is yours as long as you live,' it will return to its owner (after the recipient's death)." (Muslim)

## Gift for the Survivor

### Its Definition

A gift for the survivor refers to when a Muslim says to his brother, "If I die first, my residence or my garden will be yours. If you die first, your residence will belong to me." It could also be his saying, "This is yours as long as you live, so if you die first, it will be returned to me. But if I die first, it will be yours." This means that it will belong to whoever dies last between them.

### Its Ruling

A gift for the survivor is a disliked act. The Messenger of Allāh ﷺ said:

«لَا تُرْقِبُوا، مَنْ أَرْقَبَ شَيْئًا فَهُوَ سَبِيلُ الْمِيرَاثِ»

«Do not give a gift for the survivor. So if anyone gave a gift for the survivor, it goes to his heirs.» (Ahmad, Abu Dawud, Ibn Majah and An-Nasa'i, and its chain of narration is *Hasan*.)

The meaning of this type of giving is in fact waiting for the

death of the giver. This leads to the person who received the gift wishing for the death of his brother, the giver of the gift. Sometimes he will strive for his destruction. We seek refuge with Allāh from that. Therefore, most of the scholars disliked it.

### **Its Regulations**

If a Muslim commits this disliked act and gives a gift that is for the survivor, the laws of it are according to the laws of a lifelong gift. When he gives such a gift unconditionally the property will go to him and his descendants after him. If he sets restrictions, then the matter will go according to the restrictions. If he makes a condition that it must be returned, it will be returned to him. If he does not make such a condition, it will not be returned to him.

### **Textual Format for Recording the Gift that is Given for Life, or Dependant upon the Survivor**

In the Name of Allāh. All praises are due to Allāh. May peace and blessings be upon the Messenger of Allāh.

"Verily so-and-so has given the entire house or garden, whose borders are specified as such and such, to so-and-so as a lifelong gift or a gift for the survivor. He has given it being a lifelong gift or a gift for the survivor as a legal and authentic gift. This is by his saying to him, 'I have given you such and such property as a lifelong gift or a as a gift for the survivor, as long as you live. If you die it will return to me.' If he mentions his descendants, he says, 'And it will belong to your descendants after you.' The giver has given him the mentioned house, and thereby he has received it legally. So the property has come under the control and possession of the receiver. He can use the house by living in it, allowing others to live in it and utilizing all of its benefits, as long as he lives. This is witnessed and duly signed on such and such date."

## Marriage and Related Matters

### Marriage

#### Its Definition

Marriage (*An-Nikah* or *Az-Zawaj*) is a contract enabling each spouse to have enjoyment with the other.

#### Its Ruling

Marriage is a legal act. This is based upon the statement of Allāh:

﴿فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنٍ وَثُلَاثَ وَرُبْعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ﴾

﴿Then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one or (slaves) what your right hands possess.﴾ (4:3)

And His statement:

﴿وَأَنْكِحُوا الْأَيْمَانَ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ﴾

﴿And marry those among you who are single and (also marry) the Salihun (pious) of your (male) slaves and maidservants.﴾ (24:32)

Marriage is obligatory for whoever is able to find the provisions to do so and he fears committing what is forbidden. This is due to the Messenger of Allāh's statement:

«يَا مَعْشَرَ الشَّبَابِ! مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصَرِ، وَأَخْصَنُ لِلْفَرْجِ»

«O group of young men! Whoever among you is able to afford it then let him get married. For verily it is better for lowering the gaze and it is safer for the private parts.» (Al-Bukhari and Muslim)

And the Messenger of Allāh ﷺ said:

«تَزَوَّجُوا الْوُدُودَ الْوُلُودَ، فَإِنِّي مُكَائِرُ بِكُمْ الْأُمَمَ يَوْمَ الْقِيَامَةِ»

«Marry the loving and the fertile. For verily I will compete by your numbers against the other nations on the Day of Resurrection.» (Ahmad and Ibn Hibban, who graded it *Sahih*)

### **Its Wisdom**

From the wisdom behind marriage is the following:

- (1) Continuing the existence of the human race through the procreation process, which is a direct result of marriage.
- (2) Fulfilling the need of each spouse by the other, in order to maintain their chastity by satisfying natural sexual desires.
- (3) Cooperation of each partner in raising the progeny and preservation of its life.
- (4) Organizing the relationship between a husband and wife upon the foundation of exchanging rights with one another and mutual assistance that comes about in the circle of love, affection, respect and honor of each other.

### **The Essential Elements of Marriage**

For the validity of a marriage, it is necessary that four essential elements are present:

#### **Legal Guardian**

The legal guardian is the father of the wife, or his designated representative, or her closest male relative, or a man of understanding from her family, or the (Islamic)



ruler. This is due to the Messenger of Allāh's statement:

«لَا نِكَاحَ إِلَّا بِوَلِيٍّ»

«There is no marriage without a legal guardian.» (The Sunan compilers, and it was graded *Sahih* by Al-Hakim and Ibn Hibban.)

'Umar said "A woman may not be married without the permission of her legal guardian, or a man of understanding from her family, or the Muslim ruler." (Malik in *Al-Muwatta'* with a *Sahih* chain of narration.)

### **The Regulations for a Legal Guardian**

There are certain laws regarding the legal guardian that must be observed:

(1) He should be eligible for guardianship. This means that he should be a mature, intelligent, free (i.e. not a slave), competent male.

(2) If she is virgin and her father is her legal guardian, he has to obtain her consent prior to marrying her. If she is a woman who has been previously married, or a virgin whose legal guardian is not her father, she must be consulted regarding the proposal.

This is due to the Messenger of Allāh's statement:

«الْأَيِّمُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا، وَالْبِكْرُ تُسْتَأْذَنُ، وَإِذْنُهَا صَمَاتُهَا»

«A woman who has been previously married has more right over herself than her guardian, and a virgin must be asked for her consent, and her consent is her silence.» (Malik in *Al-Muwatta'* with a *Sahih* chain of narration)

(3) The guardianship of a relative is not valid when a relative who is closer in kinship is available. For example, the guardianship of a paternal uncle is not valid when her brother is available. Also, the guardianship of her brother's son (nephew) is not valid when her brother is available.

(4) If a women gives permission to two of her relatives to

find her a spouse for marriage, and both concluded an agreement for her marriage with a man (i.e. two different men), she will belong to the first one who married her. If the marriage contracts of both occurred simultaneously, her marriage to both will be invalid altogether.

## Two Witnesses

The meaning of two witnesses is that two or more just Muslim men should be present at the marriage contract. This is due to Allāh's statement:

﴿وَأَشْهِدُوا ذَوَىٰ عَدْلٍ مِّنكُمْ﴾

﴿And take as witness two just persons from among you (Muslims).﴾ (65:2)<sup>[1]</sup>

The Messenger of Allāh ﷺ said:

«لَا نِكَاحَ إِلَّا بِوَلِيِّ وَشَاحِدَيْنِ عَدْلٍ»

«There is no marriage without a guardian and two just witnesses.»<sup>[2]</sup>

## Regulations Regarding the Two Witnesses

From the regulations related to this pillar are the following:

- (1) The witnesses should be two or more men.
- (2) Both men should be just. Justice here means avoiding major sins and avoiding most of the minor sins. Thus, a sinful person who commits fornication or adultery, or drinks wine, or devours interest and usury, his testimony will not be valid. This is due to Allāh's statement:

[1] Even though this verse is specifically referring to divorce and reconciliation, it is used by way of an analogy between marriage and these two situations.

[2] Al-Bayhaqi and Ad-Daraqutni and it is defective. It was reported by Ash-Shafi'i with a different route of transmission that is *Mursal*. Ash-Shafi'i said, "Most of the people of knowledge go by this." At-Tirmithi said the same.

﴿ذَوَىٰ عَدْلٍ مِّنكُمْ﴾

﴿two just persons from among you﴾ (65:2)

The Messenger of Allāh ﷺ said:

«... وَشَاهِدَيْنِ عَدْلٍ»

«and two just witnesses.»

(3) It is preferable to have more witnesses due to the lack of justice (as described above) in our present time.

## The Wording of the Marriage Contract

It is a saying of the husband-to-be or his representative at the time of the contract, "Marry me to your daughter or so-and-so girl that you have been left in charge of." So that the guardian will respond to him saying, "Indeed I have given you my daughter, so-and-so in marriage." Thereupon the groom says, "I have accepted her marriage to me."

## Its Regulations

(1) The husband should be a suitable mate for the wife. This means that he should be free (i.e. not a slave), possessing good character, and he should be religious and trustworthy. This is due to the Messenger of Allāh's statement:

«إِذَا أَنَاكُمْ مَنْ تَرْضَوْنَ خُلُقَهُ وَدِينَهُ فَرَّوْجُوهُ، إِلَّا تَفْعَلُوا نَكُنْ فِتْنَةٌ فِي الْأَرْضِ  
وَفَسَادٌ كَبِيرٌ»

«If one whose character and religion pleases you comes to you (with a proposal), you should marry him (to your single women). If you do not do so, there will be tribulations in the land and great corruption.» (At-Tirmithi, who said it is Hasan Gharib)

(2) Designating a representative for the marriage contract is valid. The husband can authorize whomever he likes. However, for the wife, her legal guardian should conduct

her marriage contract on her behalf.

### **Mahr (Dowry)**

*Mahr* or *Sadaq* is what a woman is given that makes it lawful to have lawful sexual enjoyment with her. Giving a *Mahr* is an obligatory act. This is due to Allāh's statement,

﴿وَأَوْفُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً﴾

«And give to the women their Mahr with a good heart.» (4:4)

The Messenger of Allāh ﷺ said:

«الْتَمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيدٍ»

«Find something (to give the woman), even if it is a ring made of iron.» (Al-Bukhari and Muslim)

### **Its Regulations**

The following are the laws of the *Mahr*:

(1) It is recommended to make the *Mahr* simple. This is due to the Messenger of Allāh's statement:

«أَعْظَمُ النِّسَاءِ بَرَكَهَ أَيْسَرُهُنَّ مَوْثَنَةً»

«The most blessed woman is she who is easiest to provide for.»

(Ahmad, Al-Hakim, and Al-Bayhaqi with a *Sahih* chain of narration)

Also, the dowry for the daughters of the Prophet ﷺ was four hundred or five hundred dirhams. (The *Sunan* compilers and it was graded *Sahih* by At-Tirmithi) Likewise was the dowry of the Prophet ﷺ to his wives.

(2) It is Sunnah to mention the *Mahr* in the wedding contract.

(3) The *Mahr* is valid as any lawful thing of value whose value is more than one-fourth of a dinar. The Messenger of Allāh ﷺ said:

«الْتَمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيدٍ»

«Find something (to give the woman), even if it is a ring made of iron.»

(4) Paying the *Mahr* at once along with the marriage contract is valid. Delaying all or some of it as a credit is also valid. This is due to the statement of Allāh:

﴿وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً﴾

«And if you divorce them before you have touched (had a sexual relation with) them, and you have appointed unto them their due (*Mahr*).» (2:237)

However, giving her something before entering upon her for consummating the marriage (i.e. sexual intercourse) is recommended. This is based upon what Abu Dawud and An-Nasa'i reported: "The Prophet ﷺ ordered 'Ali to give something to Fatimah before entering upon her (i.e. consummating the marriage). 'Ali said, 'I do not have anything.' He ﷺ said:

«أَيْنَ دِرْعُكَ؟»

«Where is your shirt of armor?»

Therefore, 'Ali gave his armor to her.

(5) The *Mahr* is made a responsibility from the time of the marriage contract. Paying it becomes obligatory upon consummation of the marriage. If he divorces her before having sex with her, she will be entitled to half of the *Mahr*, while the other half will be void. Allāh said:

﴿وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ﴾

«And if you divorce them before you have touched (had a sexual relation with) them, and you have appointed unto them their due (*Mahr*), then pay half of what they are due.» (2:237)

(6) If the husband dies before consummating the marriage with her and after the marriage contract, she will be eligible for his inheritance and the complete *Mahr* if it was specified. This is based upon the ruling given by the

Messenger of Allāh ﷺ in this regard.<sup>[1]</sup> If the *Mahr* was not specified, she will get whatever is generally given to other women like herself as a *Mahr*. She must also observe the prescribed waiting period for the death of her husband.

## Manners of Marriage and Its Sunnah Acts

### Marriage Sermon

It is Sunnah to deliver a *Khutbah* (sermon) thus:

«إِنَّ الْحَمْدَ لِلَّهِ نَسْتَعِينُهُ وَنَسْتَغْفِرُهُ وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ أَنْفُسِنَا وَسَيِّئَاتِ أَعْمَالِنَا، مَنْ يَهْدِهِ اللَّهُ فَلَا مُضِلَّ لَهُ وَمَنْ يَضِلَّ فَلَا هَادِيَ لَهُ، وَأَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ»

«Verily, all praise is due to Allāh, Whom we ask for help and from Whom we seek forgiveness. We seek refuge with Allāh from the evils within ourselves and the evils of our actions. He whom Allāh guides has no one who can lead him astray, and he whom He leads astray has no one to guide him. I testify that there is none worthy of being worshipped but Allāh, and I testify that Muhammad is His servant and Messenger.»

Then he recites the following verses:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ حَقَّ تَقَاتِهِ. وَلَا تَمُوتُوا إِلَّا وَأَنْتُمْ مُسْلِمُونَ﴾

«O you who believe! Fear Allāh (by doing all that He has ordered and by abstaining from all that He has forbidden) as He should be feared and die not except in a state of Islam (as Muslims).﴾ (3:102)

﴿يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ فِيهِمَا رِجَالًا كَثِيرًا وَنِسَاءً. وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ. وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا﴾

<sup>[1]</sup> Recorded by the *Sunan* compilers and graded *Sahih* by At-Tirmithi. When the husband of Baru'a bint Washaq died without having specified the dowry for her, the Prophet ﷺ judged that she should receive a *Mahr* common for those like her.

﴿O mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him He created his wife [Hawwa (Eve)], and from them both He created many men and women; and fear Allāh through Whom you demand (your mutual rights), and (do not cut the relations of) the wombs (kinship). Surely, Allāh is Ever an All-Watcher over you.﴾ (4:1)

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا ۖ يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ ۗ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا عَظِيمًا﴾

﴿O you who believe! Keep your duty to Allāh and fear Him, and speak (always) the truth. He will direct you to do righteous good deeds and will forgive you your sins. And whosoever obeys Allāh and His Messenger, he has indeed achieved a great achievement.﴾ (33:70-71)

This is due to what is reported that the Messenger of Allāh ﷺ said:

«إِذَا أَرَادَ أَحَدُكُمْ أَنْ يَخْطُبَ لِحَاجَةٍ مِنْ نِكَاحٍ أَوْ غَيْرِهِ فَلْيَقُلْ: الْحَمْدُ لِلَّهِ... إلخ»

«If one of you wants to deliver a sermon for any purpose, such as marriage or its like, let him say: "All praise is due to Allāh..."» (At-Tirmithi, who graded it *Sahih*)

### The Marriage Feast (*Walimah*)

The Messenger of Allāh ﷺ said to 'Abdur-Rahman bin 'Awf when the latter married:

«أَوَلِمَ وَلَوْ بِشَاةٍ»

«Give a wedding feast (*Walimah*), even if it is with a sheep.» (Al-Bukhari and Muslim)

The wedding feast refers to food that is served for a marriage. It is obligatory for anyone who is invited to attend. The Messenger of Allāh ﷺ said:

«مَنْ دُعِيَ إِلَى عُرْسٍ أَوْ نَحْوِهَا فَلْيُجِبْ»

«Whoever is invited to a wedding or its like, let him accept.»

(Muslim)

One is excused from attending the feast if it contains any illegal amusement (i.e. music, dancing, etc.) or falsehood.<sup>[1]</sup>

If two parties invite him, he should attend the feast of the first who invited him.<sup>[2]</sup>

The poor should be invited for the feast, just like the rich. The Messenger of Allāh ﷺ said:

«شَرُّ الطَّعَامِ طَعَامُ الْوَلِيمَةِ يُمْنَعُهَا مَنْ بَاتِيهَا، وَيُدْعَى إِلَيْهَا مَنْ يَأْبَاهَا»

«The worst food is the food of a wedding feast from which those who come (i.e. the poor) are turned away and to which those who are invited refuse to come (i.e. the rich).» (Muslim)

Whoever does not accept an invitation, has disobeyed Allāh and His Messenger ﷺ. Whoever is invited while he is fasting, he still should accept the invitation. If he wishes, he can eat the food if his fast is a supererogatory fast. If he wishes, he may also accept the invitation, supplicate for the host and leave (i.e. without breaking his fast). This is due to the Messenger of Allāh's statement:

«إِذَا دُعِيَ أَحَدُكُمْ فَلْيَجِبْ، فَإِنْ كَانَ صَائِمًا فَلْيُصَلِّ - أَوْ يَدْعُ - وَإِنْ كَانَ مُفْطِرًا فَلْيَطْعَمْ»

«When one of you is invited (to a meal) he should accept. If he is fasting he should pray (i.e. make supplication for the host) and if he is not fasting he should eat.» (Muslim)

[1] This is based upon what Ibn Majah reported with *Sahih* chain of narration that 'Ali said, "I prepared some food and invited the Messenger of Allāh ﷺ. However, when he came he saw pictures in the house, so he left."

[2] This is based upon a *Hadith* reported by Ahmad and Abu Dawud :

«فَإِذَا سَبَقَ أَحَدُهُمَا فَأَجِبْ الَّذِي سَبَقَ»

«If one of them preceded the other (in invitation), then he should respond to the first of them.»



### Announcement

The marriage should be announced publicly by beating the *Daff* (Arabic hand drum, similar to the tambourine, but without the metal bangles) and permissible singing. The Messenger of Allāh ﷺ said:

«فَضْلُ مَا بَيْنَ الْحَلَالِ وَالْحَرَامِ، الدَّفُّ وَالصَّوْتُ»

«The difference between the Halal (lawful) and Haram (unlawful) is the Daff and the voice.» (The Sunan compilers, except for Abu Dawud)

### Making Supplication for the Couple

Abu Hurayrah, may Allāh be pleased with him, said, "Whenever the Prophet ﷺ congratulated a man on his marriage, he would say:

«بَارَكَ اللهُ لَكَ، وَبَارَكَ عَلَيْكَ، وَجَمَعَ بَيْنَكُمَا فِي خَيْرٍ»

*Baarak Allaahu laka, wa baarak 'alayka, wa jam'a baynakumaa fee khayr.*

«"May Allāh bless you, send blessings upon you, and join you two together in goodness."» (At-Tirmithi, who graded it *Sahih*)

### Consummating the wedding in the month of Shawwal

'A'ishah, may Allāh be pleased with her, said, "The Messenger of Allāh ﷺ married me in Shawwal and consummated the marriage with me during Shawwal. And which of all the wives of the Messenger of Allāh ﷺ was dearer to him than I." 'A'ishah used to like that the women of her family have their wedding night (for consummation) during the month of Shawwal. (Muslim)

### Supplication by the Husband

When the husband enters upon his (newlywed) spouse, he should put his hand on her forehead saying:

«اللَّهُمَّ إِنِّي أَسْأَلُكَ مِنْ خَيْرِهَا وَخَيْرِ مَا جَبَلْتَهَا عَلَيْهِ، وَأَعُوذُ بِكَ مِنْ شَرِّهَا،

وَسَرَّ مَا جَبَلَتْهَا عَلَيْهِ

*Allaahumma innee asa'luka min khayriha wa khayri maa jabaltahaa 'alayhi, wa a'uwdhu bika min sharrihaa wa sharri maa jabaltahaa 'alayhi.*

«O Allāh, I ask you for the goodness of her and the goodness upon which You have created her, and I seek refuge in You from the evil of her and from the evil upon which You have created her.»

This has been reported from the Prophet ﷺ. (Ibn Majah and Abu Dawud with the same meaning, and it is Sahih)

### Supplication at the Time of Intercourse

When wanting to begin sexual intercourse one should say:

«بِسْمِ اللَّهِ، اللَّهُمَّ جَبِّنَا الشَّيْطَانَ وَجَنِّبِ الشَّيْطَانَ مَا رَزَقْتَنَا»

*Bismillaah Allaahumma jannibnaash-shaytaana, wa jannibish-shaytaana maa razaqtanaa.*

«In the Name of Allāh. O Allāh, keep Shaytan away from us, and keep Shaytan away from what You provide us.»

This is due to what is reported from the Messenger of Allāh ﷺ that he said:

«مَنْ قَالَ... فَإِنْ قُدِّرَ بَيْنَهُمَا فِي ذَلِكَ وَلَدَ لَنْ يَضُرَّ ذَلِكَ الْوَلَدَ الشَّيْطَانُ أَبَدًا»

«If anyone of you intends to have an intercourse with his wife, he should say (the above Du'a). Then if it is ordained between them that they have a child from that, Satan will never be able to harm that child.» (Al-Bukhari and Muslim)

### Secrets of the Couple

It is disliked for couples to spread private matters between them that are related to the discussions of sexual intercourse. This is due to the Messenger of Allāh's statement:

«إِنَّ مِنْ شَرِّ النَّاسِ عِنْدَ اللَّهِ مَثْرَلَةً يَوْمَ الْقِيَامَةِ الرَّجُلُ يُفْضِي إِلَى الْمَرْأَةِ وَتُفْضِي

إِلَيْهِ، ثُمَّ يَنْشُرُ سِرَّهُمَا»

*«Verily among the worst of people in status before Allāh on the Day of Resurrection is the man who goes to his wife and she comes to him for sex, and then he divulges her secrets (of the bed).» (Muslim)*

## Conditions of the Marriage

The woman can put specific conditions on the person who proposes marriage. Such conditions should support the marriage contract and strengthen it. For example, she puts a condition of the husband spending on her (i.e. for maintenance), or that he must have sex with her, or making a fair division for her if he is a man who has another wife. Such a condition must be implemented along with the original marriage contract. If the conditions are such that will disturb the marriage contract for example, if she makes a condition that he should not have sexual enjoyment with her, or she will not prepare food and drink for him, according to what is normally considered as being her responsibility towards him - then such conditions are invalid and he is not obliged to fulfill them. This is because such conditions are contradictory to the purpose of marriage.

If the conditions are out of the spheres of the above, for example, if she puts a condition for visiting her family relatives, or that he will not make her leave her homeland. In other words, she stipulates a condition that does not make a lawful thing unlawful or an unlawful thing lawful. Therefore, he must fulfill her condition. Otherwise, she has the right to abrogate the marriage if she wants. This is due to the statement of the Messenger of Allāh ﷺ:

«أَحَقُّ الشُّرُوطِ أَنْ يُوفَى بِهِ مَا اسْتَحْلَلْتُمْ بِهِ الْفُرُوجَ»

*«The conditions that have the most right to be fulfilled are those by which you make lawful the private parts (for sexual*

intercourse).» (Al-Bukhari and Muslim)

Likewise, the woman making a condition upon a man that in order to marry her he must divorce his other wife is forbidden. This is due to the Messenger of Allāh's statement:

«لَا يَجُزُّ أَنْ تُنْكَحَ امْرَأَةٌ بِطَّلَاقِ أُخْرَى»

*«It is not allowed to marry a woman with the condition of the divorce of another wife.»* [Ahmad recorded this narration in Al-Musnad and I have not seen anyone criticizing it. This is also due to what Al-Bukhari and Muslim reported that the Messenger of Allāh ﷺ forbade that a woman make a condition (for marriage) to divorce her (Muslim) sister.]

## Option in the Marriage

Each of the spouses has the option of continuing with the marriage contract or abrogating it for any of the following reasons:

**(1) Shortcomings:** Having some shortcomings such as insanity, leprosy or skin diseases, or any disease of the sexual organs, which will cause the joy of sexual intercourse to be lost. Similarly, if the husband is castrated, crazy, or impotent, having no desire or strength to have sex with his wife.

When abrogating the marriage contract, the matter should be looked into. If the abrogation takes place before the sexual consummation, the husband can demand from his wife to return him the dowry that he gave her. If the annulment occurs after sexual consummation, he does not have any right to demand anything from her. This is because the dowry has been confirmed for her by what he did with her (i.e. intercourse). It has been said that he can demand it from her relatives, who deceived him regarding her marriage to him, if the treacherous person knew her shortcomings well in advance. The proof of this is the report

of 'Umar in *Al-Muwatta'* when he said, "Any woman, who a man was deceived concerning, such as her being insane, having leprosy or a skin disease, then she is entitled to her *Mahr* due to what he did with her (i.e. sex). The dowry of the man must be returned to him by whoever deceived him (in marrying her to him)."

**(2) Deceit:** For example, one marries a Muslim woman but later she turns out to be a woman from the People of the Book (i.e. a Christian or Jew). Or one marries a free woman and then finds out that she is a female slave. Or he marries a healthy woman and finds out later that she is sick having lameness or blindness in one eye. This is due to 'Umar's statement, "Any woman, who a man was deceived concerning, such as her being insane, having leprosy or a skin disease, then she is entitled to her *Mahr* due to what he did with her (i.e. sex). The dowry of the man must be returned to him by whoever deceived him (in marrying her to him)."

**(3) Difficulty in paying the dowry up front:** Whoever has difficulty in paying the dowry up front (not on delayed credit) to his wife, she has the right to abrogate the contract before he consummates the marriage with her. If it is after the sexual relation with her, she has no right to abrogate the marriage contract. Rather, the marriage contract will remain in effect and the dowry will be under his obligation. She never has the right to prevent him from herself (i.e. having sex with her).

**(4) Difficulty with expenditures:** Whoever has difficulty in paying the expenses of his wife, she should wait as long as she is able. Thereafter, she has the right to an annulment of the marriage with him through a legal judgment. This is what the Companions said, such as Abu Hurayrah, 'Umar, and 'Ali, as well as the successors after them like Al-Hasan, 'Umar bin Abdul-'Aziz, Rabi'ah, and Malik.

**(5) Absence of the husband:** This is if the husband disappears, his whereabouts are not known, and he left

nothing for her expenses. He also did not authorize anyone to spend on her, nor does she have anyone to spend on her except him, and she does not have anything to spend on herself until she can be reimbursed by him later. If this is the case, she has the right to the annulment of the contract through a judge of Islamic Law (*Al-Qadhi Ash-Shara'i*). She must lodge her claim to him so that he may admonish her and give her advice to be patient. If she refuses, the judge can register the proceedings by the attendance of witnesses, who know her and her husband well. They testify to the husband's absence, as well as her difficult circumstances. Thereafter, the abrogation of their marriage contract will be effective. Such an abrogation will be considered as a revocable divorce. Therefore, if the husband returns during her prescribed waiting period, she returns to him.

### **Textual Format for Recording the Proceedings:**

In the Name of Allāh. All praises are due to Allāh. May peace and blessings be upon the Messenger of Allāh ﷺ.

"Two witnesses, so-and-so and so-and-so, have appeared before us. Both are permitted legally to be witnesses because of their justness and right-mindedness. These two witnesses have willingly testified seeking nothing except the Face of Allāh. They witnessed that they know both so-and-so, the husband, and so-and-so, the wife, with correct and legal knowledge. They also give their testimony that the couple was legally married according to the Islamic Law, in which they were alone together and consummation of the marriage occurred. Then he (the husband) left her for longer than such and such period. He left her nothing for her expenses or clothing. He also left nothing adequate for her livelihood during his period of absence and no one to give towards her expenses during his absence. He has not sent anything (i.e. money) to her that has reached her. She has no money to spend on herself that she could get back from him later. She is obedient to him and living in the same place where he left her. She is compelled to seek

annulment of her marriage contract with him. Both the witnesses know these facts and witness thereof, knowing that they will be held responsible before Allāh on the Day of Reckoning.

Thereafter, the wife so-and-so has come forward and sworn by Allāh the Majestic besides Whom there is no deity worthy of worship. She legally swore that her husband so-and-so has been absent from her for a period of such and such. He left no money for her expenses or clothing. He did not leave her anything during his absence for her to spend on herself, nor any donator to spend on her expenses. He has not sent anything (i.e. money) to her that has reached her. She owns no money to spend on herself that she could recover from him later. Those who have witnessed for her concerning these facts are also true in their testimony. She has remained in his obedience, and feels compelled to seek the abrogation of her marriage bond with him

In accordance with all the above, we have responded to her question regarding the annulment of her marriage contract. This is due to what has been established as proof and the oath that she swore to as expounded above. She explicitly stated, "I have annulled my marriage bond with my husband so-and-so." This will be considered as one revocable divorce (i.e. she may return to him through reconciliation). Therefore, her marriage is annulled from her above-mentioned husband. This has been recorded on such and such date."

**(6) Manumission from slavery:** If the wife is a slave woman married to a slave husband, and then she is manumitted, she has the choice of annulling the marriage from her slave husband. This is under the condition that she did not have sexual intercourse with him after knowing of her freedom. If she had sexual relations with him even after knowing that she was free, she has no right to have the marriage annulled. In a narration recorded by Muslim, 'A'ishah said, "Barirah was manumitted and her husband

was still a slave. So the Messenger of Allāh ﷺ gave her a choice. If her husband were a free man, the Messenger of Allāh ﷺ would not have given her a choice."

## Rights of the Wife

There are many rights that the wife has upon the husband that are obligatory and confirmed for her. Allāh said:

﴿وَهُنَّ مِثْلُ الَّذِي عَلَيْكَ بِالْمَعْرُوفِ﴾

﴿And they (women) have rights similar (to those of their husbands) over them to what is reasonable.﴾ (2:228)

The Messenger of Allāh ﷺ said:

«إِنَّ لَكُمْ مِنْ نِسَائِكُمْ حَقًّا، وَلِلنِّسَاءِ عَلَيْكُمْ حَقًّا»

«Verily you have rights due upon your wives, and your wives have rights due upon you.» (At-Tirmithi, who graded it *Sahih*)

The following are some of these rights:

(1) Giving her reasonable living expenses, such as food, drink, clothing and living accommodations. This is due to the Messenger of Allāh's statement to a questioner who asked about the woman's rights upon her husband:

«تُطْعِمُهَا إِذَا طَعِمْتَ، وَتَكْسُوهَا إِذَا اكْتَسَيْتَ، وَلَا تَضْرِبُ الْوَجْهَ، وَلَا تُقْبَحُ، وَلَا تَهْجُرُ إِلَّا فِي الْبَيْتِ»

«You should give her food when you eat, clothe her when you clothe yourself. And do not strike her in the face, nor revile her (by saying 'May Allāh disfigure your face'). And do not shun her except within the house.» (Ahmad, Abu Dawud and Ibn Hibban, and it was graded *Sahih* by Al-Hakim)

(2) Sexual enjoyment: It is obligatory upon the husband to have sexual intercourse with her at least once every four months if he is unable to fulfill her requirement in this regard. This is due to the statement of Allāh:



﴿لَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرِيصُ أَزْمَةٍ أَشْهُرٌ فَإِنْ قَالُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

«Those who take an oath not to have sexual relation with their wives must wait for four months, then if they return (change their mind in this period), verily, Allāh is Oft-Forgiving, Most Merciful.» (2:226)

(3) Staying with her for one night out of every four nights, according to a decision given in the time of 'Umar.

(4) Fair division for her among his wives if her husband has wives other than her. This is due to the Messenger of Allāh's saying:

«مَنْ كَانَتْ لَهُ امْرَأَتَانِ يَمِيلُ لِأَحَدَاهُمَا عَلَى الْأُخْرَى جَاءَ يَوْمَ الْقِيَامَةِ يَجُرُّ أَحَدَ شِقَائِهِ سَاقِطًا أَوْ مَائِلًا»

«Anyone who has two wives and inclines to one of them, showing her favoritism over the other, he will come on the Day of Resurrection dragging one of his sides, with it falling or inclining.» (At-Tirmithi, and others besides him graded it *Sahih*)

(5) If the newly wedded wife is a virgin, he should stay with her seven days from the wedding day. If she is not a virgin, he has to stay with her three days from the wedding day. This is due to the Messenger of Allāh's statement:

«لِلْبِكْرِ سَبْعَةُ أَيَّامٍ، وَلِلنَّاسِ ثَلَاثٌ، ثُمَّ يَعُودُ إِلَى نِسَائِهِ»

«The virgin gets seven days and the woman who is not a virgin gets three days. Then he returns to his wives (giving them all equal turns).»<sup>[1]</sup>

(6) It is recommended for him to grant her permission to treat her male relatives, who are sick, or attend the funeral (prayer) if one of them dies. It is also recommended for him

[1] Ad-Daraqutni and its chain of narration contains some weakness. However, its meaning is in Al-Bukhari and Muslim. Thus, I say it a shorter version of it is recorded by Muslim, as its meaning is found in Muslim, Al-Bukhari and others as well.

to allow her to visit her relatives, as long as it is a visit that does not cause any harms to his interests.

## Rights of the Husband

The husband has rights that are due upon his wife and confirmed by Allāh's statement:

﴿وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ﴾

«And they (women) have rights similar (to those of their husbands) over them to what is reasonable.» (2:228)

The Messenger of Allāh ﷺ said:

«إِنَّ لَكُمْ مِنْ نِسَائِكُمْ حَقًّا»

«Verily, you have a right over your wives.» (This Hadith was mentioned previously.)

The following are the rights upon the wife:

(1) Obedience in matters of good: She should obey him in matters that are not disobedience to Allāh and matters of goodness. Therefore, she should not obey him in that which she is unable to do or it is too difficult for her. This is due to Allāh's statement:

﴿فَإِنْ أَطَعْتُمْ بَعْدَ ذَلِكَ فَأُولَٰئِكَ سَبِيلٌ﴾

«But if they return to obedience, seek not against them means (of annoyance).» (4:34)

The Messenger of Allāh ﷺ said:

«لَوْ كُنْتُ أَمْرًا أَحَدًا أَنْ يَسْجُدَ لِأَحَدٍ لَأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا»

«If I were to order anyone to prostrate to another, I would have ordered the woman to prostrate herself before her husband.» (At-Tirmithi and others.)

(2) Guarding his property and protecting his honor. She should not go outside of his house except with his

permission. This is due to Allāh statement:

﴿حَفِظْتُمْ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ﴾

«And guard in the husband's absence what Allāh orders them to guard.» (4:34)

The Messenger of Allāh ﷺ said:

«خَيْرُ النِّسَاءِ الَّتِي إِذَا نَظَرْتَ إِلَيْهَا سَرَّتْكَ، وَإِذَا أَمَرْتَهَا أَطَاعَتْكَ، وَإِذَا غَبَتْ عَنْهَا حَفِظْتَكَ فِي نَفْسِهَا وَمَالِكَ»

«The best of the women is she who pleases you when you look at her, obeys you if you command her, and guards for you her chastity and your property in your absence.» (Abu Dawud, and its meaning was recorded by Ahmad, An-Nasa'i and Al-Hakim, who graded it *Sahih*)

(3) Traveling with him if he wishes that, as long as she did not specify a condition in the contract that he will not make her travel with him. This is because her traveling with him is an obligatory part of obedience to him.

(4) Giving herself to him when he requests her to have sexual intercourse, which is one of his rights over her. The Messenger of Allāh ﷺ said:

«إِذَا دَعَا الرَّجُلُ امْرَأَتَهُ إِلَى فِرَاشِهِ فَأَبَتْ أَنْ تَجِيءَ فَبَاتَ غَضَبَانَ عَلَيْهَا، لَعَنَتَهَا الْمَلَائِكَةُ حَتَّى تُصْبِحَ»

«When a man calls his wife to his bed and she refuses to come, thus he spends the night angry with her, the angels curse her until morning.» (Al-Bukhari and Muslim)

(5) Seeking his permission for (supererogatory) fasting when he is present, not traveling. The Messenger of Allāh ﷺ said:

«لَا يَجِلُّ لِلْمَرْأَةِ أَنْ تَصُومَ وَرَوْجُهَا شَاهِدٌ إِلَّا بِإِذْنِهِ»

«It is not permissible for a woman to fast while her husband is present, except with his permission.» (Al-Bukhari and Muslim)

### Ill Conduct of the Wife

When the wife commits any ill conduct, meaning disobeying her husband, looking down upon him, and refusing to fulfill his rights, he has to admonish her. If she still does not obey him, he should stay away from her in the bed for an unspecified period as he wishes. He may also stop speaking to her for three days and no more. This is due to the Messenger of Allāh's ﷺ statement:

«لَا يَحِلُّ لِمُؤْمِنٍ أَنْ يَهْجُرَ أَخَاهُ فَوْقَ ثَلَاثِ لَيَالٍ»

*"It is not permissible for a believer to shun his (Muslim) brother for more than three nights."* (Al-Bukhari and Muslim)

If she still does not obey him, he should take disciplinary action by spanking her in a place other than her face and in a way which does not cause injury. If she still does not obey him, they should send for an arbitrator from his family and her family and they should attend their case, in order to deliberate the matter. They should take appropriate action to bring about reconciliation and agreement between the couple. If they are unable to achieve this, they should separate them with an irrevocable divorce. This is due to the statement of Allāh:

﴿وَالَّذِي تَخَافُونَ نُشُوزَهُمْ فَعِظُوهُمْ وَأَخْبِرُوهُمْ فِي الْمَصَاجِعِ وَأَصْرِيوهُمْ فَإِنْ أَطَعْتُمْ فَلَا بُعْثَوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٦٨﴾ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَرْسَلُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا﴾

﴿As to those women on whose part you see ill conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly, if it is useful); but if they return to obedience, seek not against them means (of annoyance). Surely, Allāh is Ever Most High, Most Great. If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from her's; if they both wish for peace, Allāh will cause their reconciliation.

Indeed Allāh is Ever All-Knower, Well-Acquainted with all things. ﴿4:34-35﴾

## Manners of the Bed

There are certain manners of the bed, which should be taken into consideration and adhered to:

- (1) Making foreplay with the wife and frolicking with her in a way that stirs the desire for sexual intercourse.
- (2) He should not look at her sexual organ (vagina), as it will cause him to dislike her, and it is from that which should be avoided.
- (3) When starting intercourse, he should say the following:

«بِسْمِ اللَّهِ، اللَّهُمَّ جَنِّبْنَا الشَّيْطَانَ وَجَنِّبِ الشَّيْطَانَ مَا رَزَقْتَنَا»

*Bismillaah Allaahumma jannibnaash-shaytaana, wa jannibish-shaytaana maa razaqtanaa.*

«In the Name of Allāh. O Allāh, keep Shaytan away from us, and keep Shaytan away from what you provide us.»

This is because the Messenger of Allāh ﷺ has encouraged this supplication in a *Hadith* recorded by Al-Bukhari and Muslim in which he said:

«لَوْ أَنَّ أَحَدَكُمْ إِذَا أَرَادَ أَنْ يَأْتِيَ أَهْلَهُ قَالَ: اللَّهُمَّ جَنِّبْنَا الشَّيْطَانَ وَجَنِّبِ الشَّيْطَانَ مَا رَزَقْتَنَا، فَإِنَّهُ إِنْ يَقْدَرُ بَيْنَهُمَا وَلَدٌ فِي ذَلِكَ لَمْ يَضُرَّهُ الشَّيْطَانُ أَبَدًا»

«If anyone of you intends to have intercourse with his wife, he should say, 'In the Name of Allāh. O Allāh, keep Shaytan away from us, and keep Shaytan away from what you provide us.' Then if Allāh ordains a child for them, Shaytan will never be able to harm him.»

- (4) Having sexual intercourse with her is forbidden when she is in her menstruation period or postnatal period, and before she takes a bath from these periods after becoming pure. This is due to Allāh's saying:

﴿فَاعْتَرِلُوا الْبَسَاءَ فِي الْمَجِيزِ وَلَا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ﴾

«Therefore keep away from women during menses and go not unto them till they are purified (from menses).» (2:222)

(5) It is forbidden for him (the husband) to have sexual intercourse with her in any part other than her sexual organ (vagina). This is due to what has been reported as a strong warning against such a practice. Like the Messenger of Allāh's statement:

«مَنْ أَتَى امْرَأَةً فِي دُبُرِهَا لَمْ يَنْظُرِ اللَّهُ إِلَيْهِ يَوْمَ الْقِيَامَةِ»

«Whoever has intercourse with a woman in her anus, Allāh will not look at him on the Day of Resurrection.»<sup>[1]</sup>

(6) He should not pull out of the intercourse before she satisfies her sexual desire. This is due to the harm that it may cause her. And harming a Muslim is forbidden.

(7) He should not interrupt the intercourse out of fear of her becoming pregnant except with her consent. He also should not interrupt the intercourse unless there is a serious need to do so. This is due to the Messenger of Allāh's statement about the interruption of sexual intercourse:

«هُوَ الرَّأْدُ الْخَفِيُّ»

«That is the hidden burial of live children.» (Muslim)

(8) It is recommended for whoever wants to repeat sexual intercourse to perform the minor ablution (i.e. *Wudhu*). Similarly, if he wants to sleep or eat before taking a full bath, he should perform ablution.

(9) It is permissible for him to fondle her sexually when she

<sup>[1]</sup> Al-Qurtubi mentioned this *Hadith* in his *Tafsir* and he did not criticize it. There are many *Hadiths* similar to it regarding the forbiddance of having sex with women in their anuses. Refer to Ibn Kathir's *Tafsir of Surah Al-Baqarah*.

is in her menstruation or postnatal period as long as he avoids the area between the navel and the knee. This is due to the Messenger of Allāh's statement:

«اضْنَعُوا كُلَّ شَيْءٍ إِلَّا النِّكَاحَ»

«Do everything except sexual intercourse.» (Muslim)

## Invalid Marriages

The following are marriages that the Messenger of Allāh ﷺ has prohibited:

**(1) Marriage of Mut'ah:** This is a marriage for a specific period regardless of whether its period is short or long. For example, if a man marries a woman for a fixed period, like one month or one year. This is due to the *Hadith* that has been recorded by Al-Bukhari and Muslim from 'Ali that he said, "The Messenger of Allāh ﷺ forbade the marriage of *Mut'ah* and (eating) the meat of domestic mules at the time of Khaybar."

The ruling of this type of marriage is that it is invalid. Thus, it is obligatory to nullify such a marriage whenever it occurs. If he had sexual intercourse with her, he has to pay her *Mahr*, and if he did not have sex with her he does not pay it.

**(2) Marriage of Shighar:** This is when a guardian gives his daughter in marriage on the condition that the other gives his daughter to him in marriage too. It is considered *Shighar* regardless of whether they both mentioned the dowry or not. This is due to the Messenger of Allāh's statement:

«لَا شِغَارَ فِي الْإِسْلَامِ»

«There is no Shighar in Islam.» (Muslim)

Abu Hurayrah, may Allāh be pleased with him, said, "The Messenger of Allāh ﷺ prohibited the marriage of *Shighar*. *Shighar* is when a man says, "Give me your daughter or

sister in marriage, I will give you my daughter or sister in marriage." (Muslim)

Ibn 'Umar, may Allāh be pleased with him, said, "The Messenger of Allāh ﷺ prohibited the marriage of *Shighar*. The *Shighar* is when a man gives his daughter in marriage on the condition that the other gives his daughter to him in marriage without any dowry paid by either." (Al-Bukhari and Muslim)

The ruling of this type of marriage is that it is nullified before consummation. If consummation took place, whoever did not pay the dowry, his marriage is nullified. If each of them paid the dowry, there is no abrogation of the marriages.

**(3) Marriage of *Muhallil*:** It is that a woman is divorced with three divorces and thus she becomes forbidden for her husband to remarry. Allāh said:

﴿فَلَا يَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرًا﴾

﴿Then she is not lawful unto him thereafter until she has married another husband.﴾ (2:230)

Thereafter, another man marries her with the intention to make her lawful for the former husband. This type of marriage is invalid. Ibn Mas'ud said, "The Messenger of Allāh ﷺ cursed the man who made a woman lawful for her first husband and the one for whom she was made lawful." (At-Tirmithi, who graded it *Sahih*)

The ruling of such marriage is that it should be nullified and it does not make the wife lawful for her former husband, who divorced her thrice irrevocably. If he had sexual contact with her, she is eligible for her dowry, and then both of them are separated.

**(4) Marriage while in the state of *Ihram*:** This is when a man marries while he is in the sacred state of *Ihram* for *Hajj* or '*Umrah*.

The ruling of this marriage is that it is invalid. Thereafter, if



he wishes to marry her again, he can do so with a new marriage contract after he completes his *Hajj* or *'Umrah*. This is due to the Messenger of Allāh's statement:

«لَا يَنْكِحُ الْمُخْرَمُ وَلَا يُنْكَحُ»

«One who is in the state of *Ihram* should not marry, nor give someone in marriage.» (Muslim)

This means that he should not make a marriage contract for himself or for someone else. The prohibition in this *Hadith* means forbiddance, which indicates the invalidation of such a marriage.

**(5) Marriage during the prescribed waiting period:** This refers to a man who marries a woman, who is still in the prescribed waiting period due to the death of her husband or divorce by him. This type of marriage is invalid.

Its ruling is that they should be separated due to the invalidity of their marriage contract. She is entitled to her dowry if she had sexual intercourse with him. It is forbidden for him to marry her after the completion of her waiting period as a punishment for him (for marrying her during her waiting period).<sup>[1]</sup>

Allāh said:

«وَلَا تَزِنُوا عَفْوََةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ»

«And do not consummate the marriage until the term prescribed is fulfilled.» (2:235)

**(6) Marriage without a Legal Guardian:** This is when a man marries a woman without the consent of her legal

<sup>[1]</sup> The people of knowledge hold the view that it is permissible for him to marry her after her waiting period if he did not have sexual intercourse with her during her waiting period. However, if he consummated the marriage with her while she was in her waiting period, Malik and Ahmad held the view that she was forever forbidden for him to marry afterwards.

guardian. This marriage is invalid, due to the absence of an essential element of the marriage, which in this case is the legal guardian.

The Messenger of Allāh ﷺ said:

«لَا يَنْكَاحُ إِلَّا بِوَلِيِّهِ»

«There is no marriage without a legal guardian.» (This Hadith has been mentioned previously.)

Its ruling is that they should be separated. She will be entitled to her dowry if she had sexual intercourse with him. After she has become free from any pregnancy or menstruation and become clean, he can marry her with a new contract and dowry if her legal guardian allows it.

**(7) Marrying a disbelieving woman other than a woman from the People of the Book:** Allāh said:

﴿وَلَا تَنْكِحُوا الْمُشْرِكِيْنَ حَتَّىٰ يُؤْمِنُ﴾

«And do not marry Al-Mushrikat (idolatresses) till they believe.﴾ (2:221)

It is unlawful for a Muslim man to marry a disbelieving woman, regardless of whether she is a Zoroastrian, communist, or idol worshiper. Similarly, it is unlawful for a Muslim woman to marry any disbelieving man, whether he is from the People of the Book or not. Allāh said:

﴿لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهَا﴾

«They are not lawful (wives) for the disbelievers nor are the disbelievers lawful (husbands) for them.﴾ (60:10)

The following are some rulings in this regard:

If one of the spouses of a disbelieving couple embraces Islam, their marriage will be annulled. If the other also embraces Islam before the woman's prescribed waiting period ends, they will remain in the same marriage bond. However, if the other spouse accepts Islam after her waiting

period, they have to have a new marriage contract according to the majority of the scholars of Islam.<sup>[1]</sup>

If the wife accepts Islam before the man consummates the marriage with her, she will not be entitled to her dowry, because she is the initiator of the separation. If her husband then embraces Islam, she will get half of the dowry. If she accepts Islam after consummation of the marriage, she will get the full dowry. The ruling concerning the apostasy of one of them is the same as the ruling if one of them accepts Islam, equal for equal.

Whoever embraces Islam while having more than four wives, who accept Islam along with him, or they are from the People of the Book and they did not accept Islam, he must choose four of them and abandon the rest. The Messenger of Allāh ﷺ said to a man who embraced Islam while he had ten wives:

«اخْتَرْ مِنْهُنَّ أَرْبَعًا»

«Select four wives from among them.» (Ahmad, At-Tirmithi, and Ibn Hibban graded it *Sahih*. All of the Muslims act according to this.)

Likewise, a person who embraces Islam while he has married two sisters, he must separate from (i.e. divorce) whichever one of them he wishes. This is because it is not permissible to combine two sisters in marriage (i.e. in polygamy). This is due to Allāh's statement:

﴿وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ﴾

<sup>[1]</sup> The view of the majority is not refuted by the fact that the Messenger ﷺ returned his daughter Zaynab to her husband, Abu Al-'Aas, even though he embraced Islam a long time after she did. This is because it is possible that the ruling concerning marriage to a disbeliever had not been revealed until after that. Then when the ruling was revealed, Zaynab was commanded to observe the waiting period and she did not complete her waiting period before her husband came as a Muslim. Thus, she was returned to him upon their first marriage contract.

The Messenger of Allāh ﷺ said to a man who embraced Islam while he was married to two sisters:

« طَلَّقُوا أَتَيْنَهُمَا بُنْتُ »

«Divorce whichever one of them you wish.» (Ahmad and Ibn Hibban graded it *Sahih*)

### **Women who are prohibited for Marriage forever**

**(a) Some women are prohibited for marriage due to family relations:**

- The mother and grandmother unconditionally, and any ascending grandmothers. (This is the same for the father's or the mother's side.)
- The daughter and her daughter and any descending daughters.
- The son's daughter and her daughter and any of his descending granddaughters.
- The sister unconditionally, her daughters and her son's daughters and any of his descending granddaughters.
- The paternal aunt unconditionally and any ascending aunts.
- The maternal aunt unconditionally and any ascending aunts.
- The brother's daughter unconditionally, his son's daughter, his daughter's daughter and any of their descending granddaughters.

**This is due to Allāh's statement:**

﴿حَرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَتُكُم وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَنِسَاءَ الْأَخْ  
وَبَنَاتِ الْأَخْتِ﴾

Forbidden to you (for marriage) are: your mothers, your

daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters.﴾ (4:23)

**(b) The women who are prohibited for marriage due to relations by marriage:**

- The father's wife, the grandfather's wife and any ascending wives of grandfathers. This is due to Allāh's statement:

﴿وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ﴾

﴿And marry not women whom your fathers married.﴾ (4:22)

- The wife's mother and her grandmother and any ascending grandmothers.

- The wife's daughter if the husband had sexual intercourse with her mother (i.e. the wife).

- Likewise, the daughter of the wife's daughter, or her son's daughter. This is due to Allāh's statement:

﴿وَأُمَّهَاتُ نِسَائِكُمْ رَرَبِّبِكُمْ الَّتِي فِي حُجُورِكُمْ مِّنْ نِّسَائِكُمُ الَّتِي دَخَلْتُم بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ﴾

﴿Your wives' mothers, your step-daughters under your guardianship, born of your wives to whom you have gone in - but there is no sin on you if you have not gone in them (to marry their daughters).﴾ (4:23)

- The son's wife and the grandson's wife. This is due to Allāh's statement:

﴿وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْنَابِكُمْ﴾

﴿The wives of your sons who (spring) from your own loins.﴾ (4:23)

**(c) Women who are prohibited for marriage by relationship of suckling from other than one's mother:**

- All women who are prohibited for marriage by blood relations such as:

- Mothers
- Daughters
- Sisters
- Paternal aunts
- Maternal aunts
- Daughters of the brother
- Daughters of the sister

The Messenger of Allāh ﷺ said:

«يُحْرَمُ بِالرَّضَاعِ مَا يُحْرَمُ مِنَ النَّسَبِ»

«That which is prohibited (for marriage) due to suckling is the same what is prohibited due to blood relations.» (Al-Bukhari and Muslim)

The suckling that prohibits marriage is that which occurs when the child is under two years old. This takes place when the infant truly gets milk into his stomach in a way that is considered to be suckling. This is due to the Messenger of Allāh's statement:

«لَا تُحْرَمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ»

«One or two sucks does not make marriage unlawful.» (Muslim)

This is because a single suck is something very insignificant; such a little suck of milk will not reach the abdomen-because it is so little.

### **Important Notes about Suckling:**

- The husband of the suckling mother is considered like a father to the suckling baby. Thus, his children from other than the suckling mother are brothers and sisters of the suckling child. Hence, it is unlawful for the suckling baby to marry his (foster) father's mother, his sisters, his paternal aunts, and his maternal aunts. Similarly, all children from the suckling mother, regardless of what

husband they are from, are brothers and sisters of the suckling baby. This is due to the Messenger of Allāh's statement to 'A'ishah:

«الَّذِي لَأَقْلَحَ أَخِي أَبِي الْقُعَيْسِ فَإِنَّهُ عَمُّكَ»

«Allow Aflah, the brother of Abul-Qu'ays to come in the house (with you), for verily he is your uncle. »

The wife of Abul-Qu'ays had suckled 'Aishah. (Al-Bukhari and Muslim)

This *Hadith* confirms the paternal uncle's relationship through suckling, therefore, all of the above-mentioned relations are given the same consideration.

- The brothers and sisters of the suckling baby are not prohibited by that which has made him forbidden by suckling. This is because they did not suckle like him. Therefore, it is lawful for the brother to marry the woman who suckled his brother, or her mother, or her daughter. It is also permissible for his sister to marry his foster father, or his father, or his son, and so on.

Is the wife of the foster son considered the same as the wife of the biological son so that the prohibition is applied to them?

The majority of the scholars hold the view that she is considered like the wife of the biological son (i.e. forbidden to the foster father). Those who hold the opposite view argue that the wife of the son is unlawful to her father-in-law due to marriage, and suckling only prohibits what blood relations make forbidden.

#### **(d) Invoking Mutual Curses**

It is unlawful forever for a man to remarry his wife upon whom he invoked a curse in accusation of adultery. This is due to the Messenger of Allāh's statement:

«الْمُتَلَاعِنَانِ إِذَا تَفَرَّقَا لَا يَجْتَمِعَانِ أَبَدًا»

«Those who mutually invoke curse against each other, if they separate (i.e. go through with divorce), they can never be reunited.»<sup>[1]</sup>

## The Women Whose Marriage is Temporary Unlawful

- The wife's sister until he divorces her and she ends her prescribed waiting period, or she dies. This is due to Allāh's statement in which He explains who the forbidden women are:

﴿... وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ﴾

﴿And two sisters in wedlock at the same time.﴾ (4:23)

- The paternal or maternal aunt of his wife: Therefore, she should not be married until the daughter of her brother or sister is divorced from the man and she either completes her waiting period or dies. This is due to the statement of Abu Hurayrah, may Allāh be pleased with him, "The Messenger of Allāh ﷺ forbade that a man marries a woman when he is already married to her paternal or maternal aunt." (Al-Bukhari and Muslim)

- The woman who is already married until she has been divorced or widowed and completes her prescribed waiting period. Describing the forbidden women, Allāh said:

﴿وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ﴾

﴿Also (forbidden are) women already married.﴾ (4:24)

- The woman who is observing the prescribed waiting period due to divorce, or the death of her husband, until her waiting period ends. It is also unlawful to propose to her. However, there is nothing wrong with making a hint of proposal. For example, he can say to her, "I am interested in you." Allāh said:

[1] Abu Dawud recorded it and Malik said in *Al-Muwatta'*, "The *Sunnah* with us is that the husband and wife who invoke curse against each other can never remarry each other."



﴿لَا تُوَاعِدُوهُمْ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَفْرُوعًا وَلَا تَمْسُرُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ﴾

«But do not make a promise of contract with them in secret except that you speak an honorable saying (according to Islamic Law). And do not consummate the marriage until the term prescribed is fulfilled.» (2:235)

- The woman who has been divorced by three pronouncements of divorce until she is married to another husband. Moreover, the new husband must separate from her by divorce or death and she must complete her prescribed waiting period. This is due to Allāh's statement:

﴿فَلَا يَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ﴾

«Then she is not lawful unto him thereafter until she has married another husband.» (2:230)

- The woman who commits fornication until she repents to Allāh from the fornication. Her repentance must be known with certainty and she must complete her prescribed waiting period from it. This is due to Allāh's statement:

﴿وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُتَّقِينَ﴾

«And the adulteress, none marries her except an adulterer or a Mushrik (polytheist). Such a thing is forbidden to the believers.» (24:3)

The Messenger of Allāh ﷺ said:

«الزَّانِي الْمَجْلُودُ لَا يَنْكِحُ إِلَّا مِثْلَهُ»

«A man guilty of fornication who has been flogged should not marry any but a woman similarly guilty.» (Ahmad and Abu Dawud, and Ibn Hajar said that its narrators are reliable.)

## Divorce

### Its Definition

Divorce is the dissolution of the bond of marriage by a clear word. For example, by saying, "You are divorced", or the use of a suggestive statement with the intention of divorce, like saying, "Go to your family."

### Its Ruling

Divorce is a permissible act in order to remove the harm from anyone of the spouses.

Allāh said:

﴿الطَّلَاقُ مَرَّتَانٍ فَإِنْسَاكَ أَوْ تَسْرِيحٌ بِإِحْسَنٍ﴾

«The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness.» (2:229)

Allāh also said:

﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِمَدَّتِهِنَّ﴾

«O Prophet! When you divorce women, divorce them at their 'Iddah (prescribed periods).» (65:1)

Sometimes divorce is obligatory when anyone of the spouses causes any harm that will not be removed except with divorce. Sometimes divorce is unlawful when anyone of the spouses has caused any harm and the divorce will not bring any benefit to overcome the harm or both the harm and the benefit are equal. A proof for the first situation is the Messenger of Allāh's statement to a man who complained about his wife's ill conduct:

«طَلَّقْهَا»

«Divorce her.» (Abu Dawud and it is Sahih)

A proof for the second situation is the Messenger of Allāh's

statement:

«أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ فِي غَيْرِ مَا بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ»

«Any woman who asks her husband to divorce her for something that is not truly a problem, the fragrance of the Paradise will be forbidden for her.» (The Sunan compilers and it is Sahih)

## The Pillars of Divorce

Divorce has three pillars, which are as follows:

(1) A responsible husband: Therefore, it is not allowed for anyone to pronounce a divorce other than husband. The Messenger of Allāh ﷺ said:

«إِنَّمَا الطَّلَاقُ لِمَنْ أَخَذَ بِالسَّاقِ»

«Divorce belongs only to the one who takes hold of the shin (i.e. husband).»<sup>[1]</sup>

Likewise, if the husband is not of sound mind, or he is immature having no free will, or he is under compulsion, in such cases, his divorce does not count. This is due to the Messenger of Allāh's statement:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَخْتَلِمَ، وَعَنِ الْمَجْنُونِ حَتَّى يَبْقُلَ»

«The Pen has been lifted from (recording the actions of) three: A sleeping person until he wakes up; a child until he reaches to the age of puberty; and an insane person until he regains his reason and sense.» (This Hadith has been mentioned previously.)

The Messenger of Allāh ﷺ said:

[1] Ibn Majah and Ad-Daraqutni, and it is a defective *Hadith*. However, it is acted upon due to its numerous routes of transmission and what supports it from the Noble Qur'an.

«رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ، وَمَا اسْتَكْرَهُوا عَلَيْهِ»

«My followers' (unintentional) mistakes, and forgetfulness, and what they are forced to do against their free will, are not held against them.» (At-Tabarani and it is Sahih)

(2) The wife who is bound to the divorcing husband, in a true marriage bond. This is that she is married to him in a marriage that has not been nullified by an annulment, or a divorce, or a ruling of divorce. For example, if she is observing the prescribed waiting period due to revocable divorce by first and second pronouncements of divorce. Therefore, no divorce is effective on a woman who no longer belongs to the husband pronouncing the divorce. Moreover, divorce is not effective on a woman who has been divorced irrevocably with three divorces. Similarly, divorce is not effective on a woman whose marriage was annulled, or who was divorced before consummation of the marriage with her.<sup>[1]</sup> Such a divorce is ineffective because it does not occur in its appropriate place and thus it is considered insignificant. This is due to the Messenger of Allāh's statement:

«لَا نَذَرَ لِابْنِ آدَمَ فِيمَا لَا يَمْلِكُ، وَلَا عِنَى لَهُ فِيمَا لَا يَمْلِكُ، وَلَا طَلَاقَ لَهُ فِيمَا لَا يَمْلِكُ»

«No son of Adam may make a vow about what he does not possess, or set free what he does not possess, or divorce what he does not possess.» (At-Tirmithi, who graded it Hasan)

(3) A word that leads to divorce explicitly or implicitly. Therefore, merely an intention without verbally pronouncing the divorce is not sufficient and the wife is not divorced by it (i.e. mere intentions). The Messenger of Allāh ﷺ said:

«إِنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي عَمَّا حَدَّثْتُ بِهِ أَنْفُسَهَا مَا لَمْ يَتَكَلَّمُوا أَوْ يَفْعَلُوا بِهِ»

[1] There is a difference of opinion concerning the person who says, "If I marry so-and-so and he names a specific woman then she is divorced."

*«Allāh the Most High has exempt my followers from what they contemplate within themselves so long as they do not speak or act according to it.»* (Al-Bukhari and Muslim)

## Categories of Divorce

The following are the categories of the divorce:

### (1) The Divorce according to the Sunnah

This refers to a divorce that is pronounced during the wife's purity in which he did not have any intercourse with her. When a Muslim intends to divorce his wife due to the harm caused to one of them, which cannot be prevented except by a divorce, he must wait until her menstruation and purity after that. Then, when she becomes pure, he does not have sex with her, and he pronounces a single divorce on her. For example, he says, "Verily you are divorced." This is due to the statement of Allāh:

﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ﴾

﴿O Prophet! When you divorce women, divorce them at their 'Iddah (prescribed period).﴾ (65:1)

### (2) The Divorce that is an Innovation in the Religion

This refers to a divorce that was pronounced by a man on his wife during the following situations:

- her menstruation period
- her postnatal period
- her state of purity in which he had sexual intercourse with her,
- or he divorces her thrice in one word, or he repeats it in three words simultaneously. For example, he says, "She is divorced, she is divorced, she is divorced."

This is due to the command of the Messenger of Allāh ﷺ to 'Abdullah bin 'Umar, who divorced his wife while she was menstruating, to take her back. The Prophet ﷺ commanded

him to take her back (and keep her) until she became pure, then has another menstruation period, then she became purified from it. Then, if he wished, he could keep her, and if he wished, he could divorce her before having sexual intercourse with her. The Messenger of Allāh ﷺ then added:

«فَبَلَكَ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ سُبْحَانَهُ أَنْ تُطْلَقَ لَهَا النِّسَاءُ»

«For that is the prescribed waiting period, which Allāh commanded for the divorce of women.» (Muslim)

When the Messenger of Allāh ﷺ was informed that a man had divorced his wife with three pronouncements in one word (without any interval between them), he said:

«أَيْلَعُوبُ بِكِتَابِ اللَّهِ وَأَنَا بَيْنَ أَظْهُرِكُمْ؟»

«Is play being made of Allāh's Book while I am among you? »

The signs of intense anger appeared on him. [An-Nasa'i. Ibn Kathir said its chain of narration is good (Jayyid).]

According to the majority of the scholars the innovative divorce, like the divorce of Sunnah, is effective and it breaks the bond of marriage accordingly.

### (3) Irrevocable Divorce

This is the divorce in which the divorcing man does not possess any right to take back his wife. When such a divorce takes effects, he will become like any other man who seeks to marry her (i.e. if he intends to remarry her). If she likes, she can accept him for new marriage by a new marriage contract and new dowry, and if she wills, she can refuse him.

The irrevocable divorce occurs in five circumstances:

(a) He divorces her with a revocable divorce, then leaves her and does not take her back until she completes her prescribed waiting period. Thus, it will be an irrevocable divorce simply by her waiting period ending.

(b) That he divorces her for some wealth that she pays to

him to remove herself from the marriage (i.e. *Khul'*).

(c) Divorce her through the two arbitrators, when they find that divorce is a better solution than remaining in the (unsuccessful) marriage bond.

(d) That he divorces her before having sex with her. This is because a divorced woman whose husband did not consummate the marriage with her has no prescribed waiting period. Therefore, her divorce became irrevocable simply by its occurrence.

(e) That he divorces her absolutely by pronouncing divorce on her thrice in one statement, or with separated pronouncements in one sitting, or he divorces her for the third time after having completed two previous divorces before it. In such a case her divorce is irrevocable. Therefore, she is unlawful for him until she marries another husband.<sup>[1]</sup>

[1] When a man says to his wife, "You are divorced three times" as one statement, or, he says, "You are divorced, you are divorced, you are divorced," then it only counts as one divorce. This is because of what is reported from Ibn 'Abbas, may Allah be pleased with him, who said, "Divorce during the time of Allah's Messenger ﷺ, Abu Bakr, and two years during the *Khilafah* of 'Umar, was such that three divorces [stated at once] were one." See Muslim, the Book of Divorce, the chapter on Three Divorces, no. 1472. Additional evidence is recorded by Ahmad in his *Musnad* from Ibn 'Abbas, may Allah be pleased with him, that he said, "Rukanah bin 'Abdu Yazid - the brother of Al-Muttalib - divorced his wife three times in one sitting. So he became very upset about that. He asked Allah's Messenger ﷺ who said:

«كَيْفَ طَلَّقْتَهَا؟»

«How did you divorce her?»

He said, 'With three divorces.' He asked:

«فِي مَجْلِسٍ وَاحِدٍ»

«In one sitting?» He replied, 'Yes.' He ﷺ said:

«فَإِنَّمَا تِلْكَ وَاحِدَةٌ فَأَرْجِعْهَا إِنِ شِئْتَ»

#### (4) Revocable Divorce

This is a divorce in which the husband holds the right to take back his divorced wife, even without her consent. This is due to Allāh's statement:

﴿وَمَوْلَاهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا﴾

﴿And their husbands have the better right to take them back in that period, if they wish for reconciliation.﴾ (2:228)

The Messenger of Allāh ﷺ commanded Ibn Umar when the latter divorced his wife:

«رَاجِعِيهَا . . .»

«Take her back.» (Muslim)

Revocable divorce is a pronouncement of divorce that is less than three divorces for the woman, who the man has consummated marriage with, and without any compensation. The woman who has been divorced

«That was only one, so return to her if you want.»

So he returned to her." See *Musnad Ahmad* 1:265. Ibn Hajar said (*Fath Al-Bari* 9:275 under the chapter on Who allowed Three Divorces): "It was recorded by Ahmad, and Abu Ya'la who graded it *Sahih*, from the route of Muhammad bin Ishaq. This *Hadith* is a clear text on this matter that does not allow for interpretation based upon other narrations."

Similarly, stating divorce three times at once, then counting it as three is in obvious contradiction to the Qur'an because there is no divorce for the woman who has been entered into except that which is stated in the Qur'an as "twice". Then what remains is the third that makes her unlawful afterwards. Allah the Almighty said:

﴿الطَّلَاقُ مَرَّتَانٍ﴾

﴿The divorce is twice﴾ (Al-Baqarah 2:229)

And:

﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ﴾

﴿O Prophet! When you divorce your women, then divorce them in their 'Iddah and count the 'Iddah.﴾ (At-Talaq 65:1)



revocably, her ruling is like the wife in reference to the living expenditures, housing accommodations, and other matters, until her prescribed waiting period ends. When her waiting period is over, her divorce will be irrevocable from her husband. If the husband of the woman who has been divorced revocably wants to take her back, it is sufficient for him to say, "I have taken you back." It is Sunnah for him to take two just witnesses concerning her return to him.

### **(5) Clear Divorce**

It is a kind of divorce in which no intention is required on the part of the man pronouncing it. Rather, it is sufficient that he clearly uses the word divorce in its pronouncement. For example, he says, "You are divorced", or "a divorcee", or "I have divorced you", and so forth.

### **(6) Divorce by Allusion**

It is a kind of divorce pronouncement, which must be accompanied by the intention of divorce. This is because the word of the divorce here is too vague to lead to divorce. For example, he says, "Go back to your family," or "Get out of the house," or "Do not talk to me," and anything similar in which the word divorce or its meaning is not used. In such a situation, the divorce would not be effective unless he intended the divorce. The Messenger of Allāh ﷺ divorced one of his wives saying:

«الْحَقِّي بِأَهْلِكَ»

«Go back to your family.» (Al-Bukhari and Muslim)<sup>[1]</sup>

There was no doubt that the Messenger of Allāh ﷺ meant divorce by the above statement. Yet, when Ka'b bin Malik was informed about the command of the Messenger of Allāh

[1] The woman was the daughter of Al-Jawan. When he came to her she said, "I seek refuge in Allāh from you." So he ﷺ replied, "Your seeking refuge is with the Most Great. Return to your family."

ﷺ that he was to keep away from his wife, he said, "Shall I divorce her or what should I do?" He said, "Keep away from her and do not approach her." Thereupon, Ka'b said to his wife, "Go back to your family." Therefore, she left him and returned to her family, but this was not considered a divorce on his part.

This is in regards to an indirect hint of divorce. As for the evident and apparent allusion of divorce, for example, if he says, "You are an unmarried woman",<sup>[1]</sup> or "You are an irrevocably divorced woman and you may adorn yourself for other men." These types of indirect words have no need for an intention. Rather, the divorce will occur by merely pronouncing it.

### **(7) The Immediate Divorce and the Conditional Divorce**

The immediate divorce refers to the divorce in which the wife is divorced instantly. For example, he says, "You are divorced." Thus, that divorce will be effective immediately.

As for the conditional divorce, it refers to a divorce that is related to doing something or abstaining from it. Therefore, such a divorce will not occur until after the related thing occurs. For example, if the husband says, "If you go out of the house, you are divorced," or "If you give birth to a girl, you are divorced." Therefore, she will not be divorced unless she leaves the house or gives birth to a girl.

### **(8) Giving the Option and Control of Divorce**

This is when a man says to his wife, "You choose," or "I have given you the option whether to part with me or stay with me." If she chooses divorce, she will be divorced. The Messenger of Allāh ﷺ gave the option to his wives, but they

<sup>[1]</sup> They differ over whether an evident allusion of divorce counts as an irrevocable one or one that allows return. And if it is irrevocable, then is its irrevocability of a minor or major type. Malik, may Allāh have mercy upon him, held the view that it was of the major type, that it is not permissible for him to marry her until she married another husband first.

chose to stay with him, therefore, they were not divorced.

Allāh said:

﴿يَا أَيُّهَا النَّبِيُّ قُلْ لِّأَزْوَاجِكَ إِن كُنتُمْ تُرِيدُونَ الْحَيَاةَ الدُّنْيَا فَإِنَّكُمْ تَسْلُكُونَ سَبِيلًا  
وَأَسْرَعَكُمْ مَّا كُنْتُمْ بِمُعْذِرِينَ﴾

﴿O Prophet! Say to your wives: "If you desire the life of this world, and its glitter, then come! I will make a provision for you and set you free in a handsome manner (divorce)."﴾ (33:28)

As for the divorce by giving control over it to the wife, it is his saying, "I have given you control over your affair (i.e., divorce)," or "Your affair (i.e. divorce) is in your hand." If he says this to her and she responds by saying, "Then I am divorced," then she is divorced with one revocable divorce.<sup>[1]</sup>

### **(9) Divorce through Representation or Writing**

When a husband authorizes a man as his representative to divorce his wife or he writes a letter to her announcing to her that she is divorced and he dispatches it to her, she is divorced. There is no difference of opinion among the scholars concerning this, as appointing a representative is permissible in the matters of rights. Also, writing is a substitute for speaking when he is unable to be present or he is a mute, for example.

### **(10) Divorce by making Her Unlawful for Him<sup>[2]</sup>**

This is the saying of a husband to his wife, "You are

<sup>[1]</sup> Malik and some of the people of knowledge hold the view that if the woman who is given control over her affair says, "I choose the three divorces," then she is irrevocably divorced from the husband and he has no right to take her back. He also may not marry her until after she has been married to another man.

<sup>[2]</sup> This issue met a great deal of difference among the Salaf that there are about eighteen different opinions for it. This is because of the absence of any text from the Book or the Sunnah. I have mentioned what is, if Allāh wills it, the most reliable of the views.

unlawful for me,” or “You are forbidden.” If he intends divorce, then it will be effective as a divorce. If he intends *Thihar* (declaring her to be like his mother from the back), it will be *Thihar*, for which it is obligatory to make expiation for before returning to the wife. If he did not mean either of the above, or he intended to swear an oath, for example, if he says, “You are unlawful for me if you do such and such,” and she does it, he has to expiate for breaking the oath, and nothing else.

Ibn ‘Abbas said, “When a man makes his wife unlawful for himself, it will be treated as an oath for which expiation must be made.” He added, “You have a good example in Allāh’s Messenger ﷺ.” (He meant by this that the Prophet ﷺ declared his slave girl, Mariyah, unlawful for himself, but she was not unlawful for him. So the only expiation that he did for this was freeing a slave.) (Al-Bukhari and Muslim)

### (11) The Forbidden Divorce

This refers to a husband divorcing his wife three times in one word or with three words in one sitting. For example, he says, “You are divorced thrice,” or “You are divorced, divorced, divorced.” This type of divorce is unlawful according to the consensus of the Muslim scholars. This is due to the statement of Allāh’s Messenger ﷺ when he was informed that a man had divorced his wife with three pronouncements of divorce together (without any interval between them). He stood up in anger and said:

«أَيْلَعَبُ بِكِتَابِ اللَّهِ وَأَنَا بَيْنَ أَظْهُرِكُمْ؟»

«Is the Book of Allāh being played with while I am among you?»

Consequently, a man got up and said, “O Messenger of Allāh, shall I kill him?” (This narration was mentioned previously.)

The ruling of such a divorce according to the majority of scholars, including the four Imams and others, is that it is

counted as three divorces. Such a divorced wife is unlawful for her husband until after she has married another husband.

As for the scholars who hold the minority view, they consider it to be effective as only one divorce. They disagree about the status of such divorce whether it is irrevocable or revocable. The scholars differ in this issue due to the differences in the textual proofs and what each group understood from the texts.

Since the scholars differ concerning the issue, it is good to look into the circumstances of the man who pronounced the divorces. If he did not intend three divorces by his saying, "You are divorced thrice," but only to frighten his wife or only an oath against her if she did something, then it should be considered only one divorce. For example, if he says, "You are divorced thrice, if you do such and such," and then she does it, or if he was in a state of extreme anger, or he said the three divorces not intending to divorce her completely. Therefore, it will be considered as one divorce. If he intends by his saying, "You are divorced three times," truly to divorce her thrice and separate her from himself irrevocably so that she may not return to him under any circumstance as the three divorces regulate, then, in this case she will not be lawful for him until she marries another husband. This view is according to the combined understanding between the evidences and a mercy for the Muslim *Ummah*.

### **Two Points to Note:**

- The people of knowledge have agreed that the woman who has been divorced three times and married another husband other than her first husband with a correct marriage contract in which they had sexual intercourse, if she later returns to her first husband (after being divorced by her second husband or after his death), she returns with her first divorce being invalid. Therefore, the former husband will have three new divorces (to start over with).

The scholars differ concerning a divorced woman who was divorce with one or two divorces, and married a new husband, then returned to the first husband. Does this new marriage invalidate the first divorce or will that divorce still be counted against her?

According to Malik, the new marriage with a new husband other than her previous one will not invalidate the former divorces unless they were three (irrevocable). According to Abu Hanifah and one of the views of Ahmad, if marrying a second husband will nullify the three divorces of the former husband, it is more appropriate that it nullifies what is less than three divorces. This is the statement of Ibn 'Abbas and Ibn 'Umar also, and Allāh knows best.

- The majority of the Companions, their successors and the Imams held the view that a male slave will only have two pronouncements of divorce over his wife. If he divorces her twice, it will be irrevocable, and she will be unlawful for him until she marries another husband other than him.

### ***Al-Khul'***

#### **Its Definition**

The *Khul'* is when a woman ransoms herself from her husband, whom she dislikes, by paying him monetary compensation in order to separate from him.

#### **Its Ruling**

*Khul'* is permissible if it meets the conditions. The wife of Thabit bin Qays came to the Prophet ﷺ and said, "O Messenger of Allāh! I do not criticize him (Thabit bin Qays) in respect of his character or religion, but I hate to be guilty of ungratefulness in Islam." So the Messenger of Allāh ﷺ asked her:

«أَتُرِيدِينَ عَلَيَّ حَدِيقَتَهُ؟»

«Will you give him back his garden? »

She replied, "Yes." So the Messenger of Allāh ﷺ said to him:

«اقْبَلِ الْحَدِيثَةَ وَطَلِّقْهَا تَطْلِيقَةً»

«Accept the garden and give her one divorce.» (Al-Bukhari and An-Nasa'i)

### Its Conditions

The following are the conditions of the *Khul'*:

- (1) That the hatred should be on the wife's part. If the husband dislikes her, he is not eligible to receive compensation from her. Rather, he has to be patient with her or divorce her if he fears any harm.
- (2) The wife should not demand the marriage separation from him until she reaches a severe level of harm, from which she fears that she will not be able to maintain the limits (laws) of Allāh regarding herself or the rights of her husband.
- (3) The husband should not cause her deliberate harm so that she will separate from him. If he does this, it is not permissible for him to get anything from her as compensation, and he will be a sinner. A *Khul'* should be considered an irrevocable divorce. If he wants to take her back, she will not be lawful for him except with a new marriage contract.

### Its Regulations

The following are the regulations for *Khul'*:

- (1) It is recommended that the man not take back from her more than what he gave her for her dowry. This is because Thabit bin Qays was satisfied in being separated from his wife by taking back the garden, which he had given her as her bridal gift, and that was by the command of the Messenger of Allāh ﷺ.<sup>[1]</sup>

[1] In some wordings of this narration it states that the Prophet ﷺ said, "Will you give him back his garden that he gave to you?" She replied, "Yes, and more." The Messenger of Allāh ﷺ then said, "As for more, no. But only his garden."

(2) If the *Khul'* has taken place by using its proper words, she has to observe her prescribed waiting period for one menstruation period, like a woman, who is in her waiting period for absolution of her pregnancy. Allāh's Messenger ﷺ commanded the wife of Thabit bin Qays to observe her waiting period for one menstruation period. If the separation has taken place using the words of normal divorce, the majority of scholars say that she has to observe her prescribed waiting period for three menstrual cycles.

(3) The husband does not have any power to take back his wife who has been separated from him by *Khul'* while she is in her waiting period. This is because the *Khul'* has irrevocably separated her from him.

(4) When a minor daughter suffers any harms from her husband, her father can act on her behalf to seek separation (*Khul'*) from him, because she does not possess sound judgment or maturity.

### ***Al-Iyla'***

#### **Its Definition**

*Al-Iyla'* is when a man swears by the Name of Allāh that he would not have sexual intercourse with his wife for a period of more than four months.

#### **Its Ruling**

Taking an oath not to have sexual relations with the wife is permissible in order to discipline the wife if it is for less than four months. This is due to the statement of Allāh:

﴿لَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ زَيْحٌ أَرْبَعَةَ أَشْهُرٍ فَإِنْ قَامُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

﴿Those who take an oath not to have sexual relation with their wives must wait for four months, then if they return (change their idea in this period), verily, Allāh is Oft-Forgiving, Most Merciful.﴾ (2:226)



The Messenger of Allāh ﷺ took an oath not to have sexual relations with his wives for a complete month. However, it is considered forbidden if it is done only to harm the wife and not with the intention of disciplining her. This is due to the Messenger of Allāh's ﷺ statement:

«لَا ضَرَرَ وَلَا ضِرَارَ»

«Do not hurt anyone and do not allow anyone to hurt you.»

(Ahmad and Ibn Majah, with a *Hasan* chain of narration)

### Its Regulations

The following are the laws of taking an oath not to have sexual relations with one's wife:

(1) If the period of four months ends from his oath and he does not have sexual intercourse with her, she demands before the authority that he either has to return to her or divorce her.

Allāh said:

﴿إِن قَامُوا فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ ۖ وَإِنْ عَرَبُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ﴾

«Then if they return, verily, Allāh is Oft-Forgiving, Most Merciful. And if they decide upon divorce, then Allāh is All-Hearer, All-Knower.» (2:226-227)

Also, Ibn 'Umar said, "When the period of four months has expired, the husband should be arrested until he divorces her." (Al-Būkhari)

(2) When the person who has taken an oath not to have sexual relations with his wife has been arrested, but he is not willing to divorce her, the ruler can let her divorced from him in order to remove the suffering that was caused to the wife.

(3) When the person who has taken an oath not to have sexual relations with his wife, divorces her after he has been arrested, the case is considered according to his divorce. If it is one divorce, it will be revocable and he may

reconcile with her. If he makes it as the final divorce, then it will be an irrevocable divorce, and he can not take her back except with a new marriage contract.

(4) The woman who has been divorced by her husband's oath not to have sexual intercourse with her, observes her prescribed waiting period as a normal divorced woman does. It is not adequate for her to wait only for the period of one menstrual cycle. This is because such a waiting period is not only for the sake of clearing her of any pregnancy.

(5) When a husband abstains from sexual relations with his wife for the same time period as *Al-Iyla'* (i.e. four months) without taking any oath to do so, he should be arrested just like the person who has taken such an oath. He should be forced to either have sexual intercourse with her or divorce her if she demands that.

(6) When the husband, who took an oath not to have sexual relations with his wife, reconciles with her before his sworn period, he must pay the expiation for breaking the oath. The Messenger of Allāh ﷺ said:

«إِذَا حَلَفْتَ عَلَى يَمِينٍ فَرَأَيْتَ غَيْرَهَا خَيْرًا مِنْهَا فَأَتِ الَّذِي هُوَ خَيْرٌ وَكَفِّرْ عَنْ يَمِينِكَ»

«If you swear an oath and then you see something else better than it, do that which is best and expiate your oath.» (Al-Bukhari and Muslim)

## **Ath-Thihar**

### **Its Definition**

*Ath-Thihar* is that a man says to his wife, "You are unlawful to me (for sex) like the backside of my mother."

### **Its Ruling**

Making one's wife unlawful by comparing her with his mother's back is forbidden. This is because Allāh called

such an act evil and a lie, and both of these things are forbidden. Allāh said about those who make a pronouncement of *Ath-Thihar*:

﴿وَالَّذِينَ يَقُولُونَ مَنكراً مِنَ الْقَوْلِ وَزُوراً﴾

﴿And verily, they utter an ill word and a lie.﴾ (58:2)

### Its Regulations

The laws of *Ath-Thihar* are as follows:

(1) According to the majority of the scholars, making one's wife unlawful by *Ath-Thihar* is not exclusively by resembling her to the mother. Rather, it could also be comparing the wife to any female relative with whom marriage is forever forbidden. Such forbidden relatives are like the daughter, the grandmother, the sister, and the paternal and maternal aunts. This is because they all have the same ruling as the mother in respect of the prohibition of marriage forever.

(2) A man who declares his wife unlawful for him by resembling her to his mother's backside, must expiate if he decides to take back his wife. Allāh said:

﴿وَالَّذِينَ يُظَاهِرُونَ مِن نِّسَابِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِّن قَبْلِ أَن يَتَّصِلَا﴾

﴿And those who make unlawful to them (their wives) by *Thihar* and wish to free themselves from what they uttered, (penalty) in that case is the freeing of a slave before they touch each other.﴾ (58:3)

(3) The expiation must be done by the one who declares his wife unlawful before they actually have sexual intercourse or any foreplay with each other, according to the above mentioned verse of Qur'an.

(4) If he has sexual intercourse with her before fulfilling the expiation, he will be a sinner. Therefore, he must turn to Allāh in repentance, by feeling guilty and seeking forgiveness. Then, he has to carry out the expiation and there is nothing else due upon him. This is due to the Prophet's statement to a man who said to him, "Verily I

declared my wife to be like my mother's backside, then I had intercourse with her before making atonement." The Messenger of Allāh ﷺ said:

«مَا حَمَلَكَ عَلَى ذَلِكَ يَرْحَمُكَ اللَّهُ فَلَا تَقْرُبَهَا حَتَّى تَفْعَلَ مَا أَمَرَكَ اللَّهُ»

«What encouraged you to do such thing, may Allāh grant you His Mercy? Do not go near her till you do what Allāh has commanded you to do.» (At-Tirmithi, who graded it Sahih)

The Prophet ﷺ did not obligate him to do anything except make the expiation.

(5) Atonement for *Ath-Thihar* is by doing either of the three things. Failing to do the first category due to inability will necessitate him to the next one and so on. The expiation is either to free a believing slave, fasting two successive months, or feed sixty poor persons. Allāh said:

﴿فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَّا ذَلِكَ نُوعِظُوكُمْ بِمَا تَعْمَلُونَ خَيْرٌ ۖ فَمَنْ لَمْ يَجِدْ فَصِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسَّا ۖ فَمَنْ لَمْ يَسْتَطِعْ فَلِطَعَامٍ سِتِينَ مِسْكِينًا﴾

«(the penalty) in that case is the freeing of a slave before they touch each other. That is an admonition to you (so that you may not repeat such an ill thing). And Allāh is All-Aware of what you do. And he who finds not (the money for freeing a slave) must fast two successive months before they both touch each other. And he who is unable to do so, should feed sixty Masakin (poor).» (58:3-4)

(6) As for the fasting, he must observe it consecutively; regardless of whether he fasts two months according to the lunar calendar or sixty days by manual counting. If he discontinues his fasting without any genuine legal excuse of illness, his previous fast will be invalid. Therefore, he must restart his two months of fasting. Allāh said:

﴿فَصِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ﴾

﴿(they) must fast two successive months﴾ (58:4)

(7) As for feeding poor persons, it must be one *Mudd* of wheat or two *Mudds* of dates or barley for each poor person. If he gives the compulsory food to less than sixty poor persons, it will not be considered enough for the expiation.

## Invoking Curses

### Its Definition

This is when a man accuses his wife of adultery. For example, he says, "I have seen her committing adultery." It is also by him denying her pregnancy by him. In such a situation, the issue should be taken to the judge. He will demand the husband to produce evidence, which must be four eyewitnesses who testify to actually seeing the adultery. If he does not produce the evidence, the judge makes them invoke curses between them. Therefore, the husband should testify four testimonies, saying, "I testify by Allāh that I have seen her committing adultery," or "Definitely this pregnancy is not by me." He should add in the fifth testimony saying, "May the Curse of Allāh be on me if I be among the liars.

If she confesses adultery, the prescribed legal penalty should be implemented upon her. If she does not confess, she should testify four testimonies saying, "I testify by Allāh that he did not see me committing adultery," or "this pregnancy is definitely by him." She should add in the fifth testimony, "May the Anger of Allāh be on me if he be of those who speak the truth."

Thereafter, the ruler should separate them, and they may never be reunited (in marriage).

### Its Permissibility

Invoking curses is a permissible act. Allāh said:

﴿وَالَّذِينَ يَزْنُونَ أَرْوَاهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَدُوا أَحْسَنَ شَهَادَةٍ وَأَقْبَلُوا إِلَيْهِمْ إِنَّهُمْ لَكَاذِبِينَ ۖ وَالْخَمِيسَةُ أَنْ لَعْنَتُ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَافِرِينَ ۖ وَيَذَرُهَا الْعَذَابُ أَنْ تَشْهَدَ أَرْبَعُ شَهَادَةٍ بِاللَّهِ إِنَّهُمْ لَمِنَ الْكَافِرِينَ ۖ وَالْخَمِيسَةُ أَنْ غَضَبَ اللَّهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ﴾

﴿And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allāh that he is one of those who speak the truth. And the fifth (testimony should be) the invoking of the Curse of Allāh on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allāh, that he (her husband) is telling a lie. And the fifth (testimony) should be that the Anger of Allāh be upon her if he (her husband) speaks the truth.﴾ (24:6-9)

Also in the *Sahih*, the Messenger of Allāh ﷺ commanded invoking curses between 'Uwaymar Al-'Ajilani and his wife, as well as between Hilal bin Umayyah and his wife. It is also proven by the Messenger of Allāh's statement:

«الْمُتَلَاعِنَانِ إِذَا تَفَرَّقَا لَا يَجْتَمِعَانِ أَبَدًا»

«Those who mutually invoke curses, if they are separated, they may never reunite.» (This *Hadith* has been mentioned previously.)

### Its Wisdom

The following are from the wisdom behind the permissibility of invoking the curse:

- (1) Maintaining the couple's honor and guarding the esteem of the Muslim.
- (2) Averting the prescribed punishment for false accusation from the husband and the prescribed capital punishment of committing adultery from the wife.
- (3) The possibility of denying the child that was conceived illegally by other than the husband.

### Its Regulations

The following are the laws related to invoking the curse:

(1) Both the spouses should be mature and of sound mind, since the insane and children are not accountable for Islamic obligations. This is due to the statement of the Messenger ﷺ:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ . . .»

«The Pen has been lifted from (recording the sins of) three:»

(This Hadith has been mentioned previously.)

(2) The husband must claim to have seen his wife committing the adultery. As for denying the pregnancy, he should claim that he did not have sexual intercourse with her at all, or that he did not have intercourse with her in such a period in which her pregnancy would likely be. For example, he claims that she delivered this child in less than six months (from his having sex with her). Without such claims, invoking curses is not possible. This is because invoking curses is not legislated simply for accusation or suspicion. Allāh said:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ﴾

«O you who believe! Avoid much suspicion; indeed some suspicion is sin.» (49:12)

Allāh's Messenger ﷺ said:

﴿إِيَّاكُمْ وَالظَّنَّ﴾

«Beware of suspicion.» (Al-Bukhari and Muslim)

In case there is only an accusation and suspicion of her chastity, it is better for him to divorce her so that he can get rid of any further whisperings of discomfort and pains due to the probing of the conscience.

(3) The judge should conduct the process of invoking the curses before a gathering of the believers. The text of the

curses should be according to the wording that is mentioned in the noble verse of the Qur'an.

(4) The judge should admonish the husband as the Messenger of Allāh ﷺ did in his saying:

«أَيُّمَا رَجُلٍ جَحَدَ وَلَدَهُ وَهُوَ يَنْظُرُ إِلَيْهِ اخْتَجَبَ اللَّهُ مِنْهُ وَفَضَحَهُ عَلَى رُؤُوسِ الْأَوَّلِينَ وَالْآخِرِينَ»

«Any man who denies his child while he looks at it (the child), Allāh will veil Himself from him and humiliate him in the presence of the first and last of the creatures.» (Abu Dawud, An-Nasa'i, Ibn Majah and Ibn Hibban graded it *Sahih*)

The judge should admonish the wife with the statement of the Messenger ﷺ:

«أَيُّمَا امْرَأَةٍ أَدْخَلَتْ عَلَى قَوْمٍ مِنْ لَيْسَ مِنْهُمْ، فَلَيْسَتْ مِنَ اللَّهِ فِي شَيْءٍ، وَلَكِنْ يُدْخِلُهَا الْجَنَّةَ»

«Any woman who enters (a child) into a family who does not belong to it, she has nothing to do with Allāh, and Allāh will not put her in Paradise.» (This *Hadith* has been mentioned previously.)

(5) The judge should separate them and they should never be allowed to reunite. This is due to the Messenger of Allāh's statement:

«الْمُتَلَاعِنَانِ إِذَا تَفَرَّقَا لَا يَجْتَمِعَانِ أَبَدًا»

«Those who mutually invoke curses, if they separate, they may never be reunited.» (This is part of the previous *Hadith*.)

(6) The child will not be a part of the lineage of the husband who invokes curses. Therefore, they will not inherit one another. He (the husband) also does not spend on the child. However, he conducts dealings with the child as if it is his child, as a precaution. Thus, he does not pay the *Zakah* to him. The marriage prohibition of the first-degree relatives will apply between him (the child) and his



(the husband's) children. There will be no prescribed punishment in retaliation between them. The testimony for one another will not be accepted from them. The child will be a part of the lineage of his mother. Therefore, she will inherit from the child and he will inherit from her, according to the judgement of the Messenger of Allāh ﷺ that he gave in the case of the child of parents who invoked curses against each other. He ruled that the child would inherit from its mother and she would inherit from it. (Ahmad and disparaging remarks have been made concerning its chain of narration. However, the majority of scholars act according to it.)

(7) If the husband later confesses to telling a lie, the child will be a part of his lineage.

## **• The Women's Prescribed Waiting Period**

### **Its Definition**

The women's prescribed waiting period refers to the days in which the woman who is separated from her husband must wait. Therefore, she may not marry others during this period and no proposal should be made to her (during it).

### **Its Ruling**

Observing the waiting period is obligatory upon every woman who has been separated from her husband, whether he is alive or dead. This is due to Allāh's statement:

﴿وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ﴾

﴿And divorced women shall wait (as regards their marriage) for three menstrual periods.﴾ (2:228)

Allāh said:

﴿وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا﴾

﴿And those of you who die and leave wives behind them, they (the wives) shall wait for four months and ten days.﴾ (2:234)

However, the woman who is divorced before the husband consummates the marriage with her, does not observe the waiting period. Likewise, she is not eligible for her dowry. She is only entitled to a present. This is due to Allāh's statement:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عَدْوٍ تَمُدُّونَهَا فَمَتَّعُوهُنَّ وَسَرَاحًا جَمِيلًا﴾

﴿O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no 'Iddah have you to count in respect of them. So give them a present, and set them free (i.e. divorce) in a handsome manner.﴾ (33:49)<sup>[1]</sup>

[1] The people of knowledge differ concerning the ruling of the present. Is it for every woman who is divorced or for some of the divorced women instead of others? Is it obligatory or is it recommended? That which seems to be closest to the truth and what is correct in this issue, and Allāh knows best, is that the present is obligatory for the woman who is divorced before consummation of the marriage if no dowry was specified for her. This is due to the clearness of the statement of Allāh: "There is no sin on you, if you divorce women while you have not touched (had sexual intercourse with) them, nor appointed for them their dowry. But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty on the doers of good." (2:236) Likewise, it is clear in His statement: "O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no 'Iddah (divorce waiting period) have you to count in respect of them. So give them a present, and set them free (i.e. divorce) in a handsome manner." (33:49) However, concerning women other than her from the divorced women, the present is recommended due to the generality of Allāh's statement: "And for divorced women, a gift (should be provided) on a reasonable (scale). This is a duty on *Al-Muttaqoon* (the pious)." (2:241) It is obligatory for the woman with whom the marriage has not been consummated and the dowry has not been designated, because she has no right to anything other than the gift, as there was not dowry designated for her. As for the other women, they have the right to either the entire bridal gift, like the woman with whom the marriage was

## Its Wisdom

The following points are from the wisdom behind the legislation of the prescribed waiting period:

- (1) If the divorce is revocable, the husband is given the opportunity to take back his wife on his own free will.
- (2) Knowing that the woman is not pregnant in order to preserve the lineage from being mixed up.
- (3) Participation of the wife in the condolences of his family and fulfilling her obligations to the husband, if she is observing the waiting period due to the death of her husband.

## The Types of Prescribed Waiting Periods

The following are the types of prescribed waiting periods:

- (1) The prescribed waiting period of a divorced woman who menstruates is three menstrual periods. This is due to Allāh's statement:

﴿وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ﴾

*«And divorced women shall wait for three menstrual periods.»*

(2:228)

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consummated, or half of it, like the woman with whom the marriage was not consummated but her dowry was designated. Thus, this latter woman receives half of her dowry. Hence, for these women the gift is not mandatory due to what they have received of the bridal gift, as opposed to the first woman (who has no specified dowry). The first woman does not get anything other than the gift. The scholars also differ over the amount of the gift. In reality, and Allāh knows best, as Malik said, there is no known limit for the gift. It is clothing and expenditure. Thus, the wealthy man must give clothing and expenditure abundantly according to his wealth. The poor man should give clothing and expenditure in a modest amount according to his financial circumstances. This is in accordance with the statement of Allāh: "But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount." (2:236)

When a woman has been divorced in her state of purity, then menstruated, then became pure, then menstruated, then became pure, then menstruated, when she becomes pure from the (third) menstruation, her prescribed waiting period has expired.

If we say that the 'three menstrual periods' refers to the three periods of purity, which is the view of the majority of the scholars, then her waiting period will expire when she enters the third menstruation. It should be noted that when she has been divorced during her menstruation, that period would not be counted as the start of her prescribed waiting period. This rule is applicable to free women only. As for the female-slave, her prescribed waiting period is two menstrual periods only. This is due to the statement of the Messenger of Allāh ﷺ:

«طَلَاقُ الْأَمَةِ تَطْلِيْقَتَانِ وَعِدَّتُهَا حَيْضَتَانِ»

*«The divorce of a slave-woman is two pronouncements of divorce, and her prescribed waiting period is two menses.»<sup>[1]</sup>*

(2) The prescribed waiting period for a woman, who does not have menstrual cycles due to her old age or due to her being a minor, is three months. This is due to Allāh's statement:

﴿وَالَّذِي يَبْتَنِ مِنَ الْمَجْجِصِ مِنْ نِسَائِكُمْ إِنْ أَرَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّتِي لَا يَحْضُنَّ﴾

*«And those of your women as have passed the age of monthly courses, for them the 'Iddah, if you have doubt (about their periods), is three months; and (likewise) for those who have no*

<sup>[1]</sup> Ad-Daraqutni. The majority of scholars have agreed that it is weak. Some of the scholars have graded it authentic as a statement of a Companion and not the Prophet ﷺ, and the majority of the Imams and the predecessors act according to it. The Thahiriyyah hold the view that there is no difference between the free woman and the slave woman, and the free man and the slave man in matters of divorce and waiting periods.

*courses (i.e. they are still immature).﴾ (65:4)*

This rule is applicable to the free woman. As for the slave-woman, her waiting period will be two months only.

(3) The prescribed waiting period for a divorced pregnant woman is until she delivers her child, regardless of whether she is a free woman or a slave. This is due to Allāh's saying:

﴿وَأَزَلَّتْ أَلْحَامُ أَجْلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ﴾

﴿And for those who are pregnant, their 'Iddah is until they lay down their burden.﴾ (65:4)

(4) The prescribed waiting period of a woman who menstruates, but her menstruation ceased for a known or unknown reason. If her menstruation ceased for a known reason, such as suckling or illness, she has to wait until her menstrual cycle returns and begin the waiting period by it, even if the time may be long (before it restarts).

If her menstruation ceased for an unknown reason, her waiting period will be for one year. In other words, she waits nine months for the period of pregnancy plus three months for the waiting period.

As for the slave woman, she has to observe her waiting period for eleven months. This is what 'Umar bin Al-Khattab, may Allāh be pleased with him, gave as a verdict among the *Ansar* and the *Muhajirun* (i.e. the Companions were present and alive), and none of them criticized him in his ruling. (The author of *Al-Mughni* attributed it to Ibn Al-Mundhir.)

(5) The prescribed waiting period of a free woman whose husband died is four months and ten days. If she is a slave, her waiting period is two months and five nights. This is due to Allāh's statement:

﴿وَالَّذِينَ يَتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا﴾

*﴿And those of you who die and leave wives behind them, they (the wives) shall wait for four months and ten days.﴾ (2:234)*

(6) The prescribed waiting period for a woman with irregular or abnormal bleeding (i.e., menorrhagia or metrorrhagia). This is the woman whose blood does not cease to flow outside of menstruation. If such blood can be distinguished from her menstrual blood, or if she knows her normal period, she should observe her waiting period according to the menstrual periods. If her bleeding is not distinguishable and she does not have a normal period, like the girl who just began to menstruate, she should wait for three months like a woman whose menstruation has ceased due to aging or who is too young to menstruate. This ruling is deduced from the ruling related to her performing prayers.

(7) The prescribed waiting period for a woman whose husband has disappeared and it is not known what happened to him, whether he is living or dead, is four years from the day that she last knew of his whereabouts. Then she has to observe her prescribed waiting period for the death of her husband, which is four months and ten days.<sup>[1]</sup>

## **Interference of Waiting Periods**

Sometimes prescribed waiting periods may interfere with each other in the same woman, for example, in the following cases:

<sup>[1]</sup> If it is decreed that she gets married after waiting the prescribed period, then her first husband comes back, she is returned to him if he desires that. However, if the second husband already consummated the marriage with her, she must observe a waiting period of a divorce. If the second husband did not consummate the marriage, there is no waiting period due upon her. If the first husband leaves her to the second husband, he does not need to bind her (to a waiting period). In the case of him leaving her to the second husband he requests (from her) the amount of the bridal gift that he gave her, and the second husband requests him to allow him to keep the wife. This is what 'Uthman and 'Ali ruled.

(1) A divorced woman who has been divorced with a revocable divorce and her husband dies during her normal waiting period. Therefore, she will move from the waiting period of a normal divorce to the waiting period of her husband's death. Thus, she has to observe her prescribed waiting period for four months and ten days from the day of the death of her husband who divorced her. This is because in the case of the revocable divorce, she still has the same ruling as the wife, contrary to the irrevocable divorce in which her waiting period does not change to another waiting period. This is because the woman who is divorced revocably is an heir while the irrevocable one does not inherit.

(2) A divorced woman observing her waiting period, who has a menstrual cycle, and she menstruated once or twice, then she reaches menopause and stops having a menstrual cycle. Thus, her waiting period will change to counting of months, which means she would have to wait three months.

(3) A divorced woman who is too young and never menstruated or a woman who is past the age of menstruation, and she observes her prescribed waiting period according to the months. Then, when one or two months passed she saw her menstrual blood, thus, her waiting period will change from the months into the menstrual periods. This is when she does not complete her waiting period according to the months. Otherwise, if her menstruation comes after the waiting period is complete, there is nothing to be considered, since her waiting period has already expired.

(4) A divorced woman who started observing her waiting period based on the months or menstrual period, then during that time it becomes apparent that she is pregnant. In this case her waiting period will change to when the baby is delivered. Allāh said:

﴿وَأُولَئِكَ الْأَحْمَالُ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ﴾

«And for those who are pregnant, their 'Iddah is until they lay down their burden.» (65:4)

## Two Notes of Importance:

### Clearing the Womb

It is obligatory upon becoming an owner of a slave woman, whom he is likely to have sex with, to abstain from sexual intercourse with her until clearing her womb. The period of clearing the womb is by the woman having a menstrual cycle, if she has menstrual bleeding, or by her delivering her baby, if she is pregnant. In case she is too young to have menstruation, or too old, she has to consider her clearing the womb as the time it would take to be certain that she is not pregnant.

Allāh's Messenger ﷺ said:

«لَا تُوطَأُ حَامِلٌ حَتَّى تَضَعَ، وَلَا غَيْرُ حَامِلٍ حَتَّى تَحِيضَ حَيْضَةً»

«There must be no intercourse with a pregnant woman until she gives birth, or with one who is not pregnant until she has had one menstrual period.» (Abu Dawud with a Hasan chain of narration. Al-Hakim graded it *Sahih*.)

Likewise, it is obligatory upon any free woman who has had sexual intercourse in a suspicious marriage, or by being raped, or by adultery or fornication, to clear her womb by waiting three menstrual periods, if she has menstruation. If she does not have menses she should wait three months. Her womb is cleared by her giving birth if she is pregnant. This is due to the Messenger of Allāh's statement:

«مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلَا يَسْقِي مَاءَهُ وَلَدَ غَيْرِهِ»

«Whoever believes in Allāh and the Last Day, let him not give his water to the child of others.<sup>[1]</sup>» (At-Tirmithi. Ibn Hibban graded it *Sahih*)

<sup>[1]</sup> i.e., by having sexual intercourse before clearing her womb from the previous husband.



The Messenger of Allāh ﷺ said:

«لَا تَسْقِ مَاءَكَ زَرْعَ غَيْرِكَ»

«Do not pour your water on the harvest of others.» (Al-Hakim and its origin is in An-Nasa'i. There is no problem with its chain of narration.)

## Mourning

Mourning refers to a woman in her prescribed waiting period abstaining from anything that leads to sexual intercourse with her. She should refrain from anything that would make her appear attractive, such as pretty adornment, perfumes and beautification.

Therefore, a widowed woman, whose husband has died, should observe mourning throughout her waiting period. She should not wear any attractive dress. She should not use kohl or henna and she should not apply perfume. She also should not wear any jewelry. This is due to the Messenger of Allāh's statement:

«لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُجِدَّ فَوْقَ ثَلَاثَةِ أَيَّامٍ إِلَّا عَلَى زَوْجٍ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا»

«It is not permissible for a woman who believes in Allāh and the Last Day to mourn for more than three days, except for her husband, whom she mourns for four months and ten days.» (Al-Bukhari and Muslim)

Umm 'Atiyyah said, "We were not allowed to observe mourning for more than three nights for someone who died, except for a husband, whom we would mourn for four months and ten days. We would not apply kohl or wear a dyed garment, except the 'Asb (a striped Yemeni garment)."

Likewise, it is obligatory upon the woman who is observing her waiting period (for the death of her husband), that she refrain from going out of her house. If she goes out for any essential needs, she must not spend the night at any place

other than the house in which she was living in when he died. This is due to the Messenger of Allāh's statement to a woman who asked him to allow her to move to the house of her family after her husband's death:

«امْكُنِّي فِي بَيْتِكَ الَّذِي أَتَاكَ فِيهِ نَعْمِي زَوْجِكَ حَتَّى يَنْتَلِغَ الْكِتَابُ أَجَلَهُ»

*«Stay in your house in which the news of your husband's death reached you until the prescribed waiting period expires.»*

She said, "I observed the prescribed waiting period in it for four months and ten days." (At-Tirmithi, who graded it *Sahih*)

## **Living Expenses (Maintenance)**

### **Its Definition**

Maintenance refers to whatever is given, such as food, clothing, and residence, to whomever it is compulsory to give it.

### **Who is obligated to receive Maintenance and Who must give it?**

Maintenance is required for the following six categories:

(1) The wife from her husband: She is eligible for the maintenance, whether she actually remains under the bond of marriage with her husband or she is his wife in principle, like a woman who has been divorced revocably before her prescribed waiting period ends. This is due to the Messenger of Allāh's statement:

«أَلَا حَقُّهُنَّ عَلَيْكُمْ أَنْ تُحْسِنُوا إِلَيْهِنَّ فِي كِسْوَتِهِنَّ وَطَعَامِهِنَّ»

*«Verily, their right upon you is that you provide them with their food and clothing in a reasonable manner.»* (At-Tirmithi, who graded it *Sahih*)

(2) A woman who has been divorced irrevocably is eligible

for her maintenance from the man during her waiting period if she is pregnant. This is due to Allāh's statement:

﴿وَإِنْ كُنَّ أُولَئِكَ حَمَلَ فَاَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ﴾

«And if they are pregnant, then spend on them till they lay down their burden.» (65:6)

(3) Adult children are responsible for spending on their parents.

Allāh said:

﴿وَيَا أُولَئِينَ إِحْسَانًا﴾

«And be dutiful and good to parents.» (2:83)

When someone asked the Messenger of Allāh ﷺ about the person most deserving of kindness and good conduct, he replied:

«أُمُّكَ (ثَلَاثًا)»

«Your mother.» He ﷺ repeated the phrase thrice. Then the fourth time he ﷺ said:

«أَنْتُمْ أَبُوكَ»

«Then your father.» (Al-Bukhari and Muslim)

(4) Minor children are eligible for maintenance from their father. This is due to Allāh's statement:

﴿وَأَنْزِلُوهُمْ فِيهَا وَأَكْلُوهُمْ وَفُولُوا لَهُمْ وَلَا تَمْرُقُوا﴾

«And feed and clothe them therewith, and speak to them words of kindness and justice.» (4:5)

The Messenger of Allāh ﷺ said:

«وَيَقُولُ الْوَلَدُ أَطْعِمْنِي إِلَى مَنْ تَدْعُنِي؟»

«The child says, 'Grant me provision. With whom are you leaving me?'» (Ahmad and Ad-Daraqutni with Sahih chain of narration from a lengthy Hadith.)

(5) The servant is eligible for maintenance from his master. This is due to the statement of the Messenger of Allāh ﷺ:

«لِلْمَمْلُوكِ طَعَامُهُ وَكِسْوَتُهُ بِالْمَعْرُوفِ، وَلَا يُكَلَّفُ مِنَ الْعَمَلِ مَا لَا يُطِيقُ»

*«A slave is entitled to his food and clothing in a reasonable manner, and he should not be burdened except with work that he is capable of doing.»* (Muslim)

(6) Domestic animals are entitled to their provision from their owner. This is due to the Messenger of Allāh's statement:

«دَخَلَتِ النَّارَ امْرَأَةٌ فِي هِرَّةٍ حَبَسَتْهَا حَتَّى مَاتَتْ جُوعًا، فَلَا هِيَ أَطْعَمَتْهَا وَلَا أَرْسَلَتْهَا تَأْكُلُ مِنْ خَشَاشِ الْأَرْضِ»

*«A woman entered the Fire due to a cat that she locked up until it died from hunger. She did not feed it nor did she release it so that it could eat from the varmints of the earth.»*  
(Recorded in the Sahih.)

## The Spending that is Obligatory

Regarding living expenses that are necessary for daily life such as good food, pure drink, clothes that protect from heat and cold, as well as lodging that provides comfort and stability, there is no disagreement. The only difference is in respect to its amount, whether more or less, a good or modest quality. The reason is that this is something that depends upon the financial ability or inability of the person who is spending. It also depends upon the status of the person being spent on, whether a city dweller or a rural dweller. Therefore, it is more appropriate to leave this issue to the decision of the Muslim judges. They are the sole authority to determine the ability and affordability according to the conditions and customs of Muslim community.

## When maintenance is not required

In the following situations, providing living expenses will not be required:

- (1) Providing living expenses for the wife will not be required if she behaves disobediently (towards the husband) or she does not allow him to have sexual relations with her. This is because providing living expenses for her is based on the husband having sexual enjoyment with her. Whenever she refuses him this enjoyment, her right to maintenance will be lost.
- (2) A revocably divorced woman, when her prescribed waiting period expires, as the expiration of her waiting period makes her irrevocably divorced from him.
- (3) A pregnant divorced woman when she gives birth. However, if she suckles his baby, it is his obligation to provide her wages for the breast-feeding. This is due to Allāh's saying:

﴿فَإِنْ أَرْضَعْنَ لَكَ فَاتُّوهُنَّ أُجُورَهُنَّ وَأَنْتُمْ عَلَيْهِنَّ مَرْفُوعَةٌ﴾

*﴿Then if they give suck to the children for you, give them their due payment, and let each of you accept the advice of the other in a just way.﴾ (65:6)*

- (4) The parents when they are rich or their children are too poor to meet their own living expenses for a daily meal, then the children will not be responsible for spending on their parents, as Allāh puts no burden on any person beyond what He has given him.
- (5) The children, when the son reaches the age of puberty and the daughter gets married. In case the son reached the age of puberty, but he is chronically ill or insane, his father must continue to spend on him.

## Two Important Notes:

- It is obligatory upon the Muslim to keep good relations with his close relatives through his father and mother.

Whenever anyone of them requires food, clothing or lodging, he should feed him, clothe him or give him a place to stay if he can afford it after meeting his own requirements. He should start spending on the very close relatives first, then the next and so on.

Allāh's Messenger ﷺ said:

«بَدَ الْمُعْطَى الْعُلْيَا، وَابْدَأْ بِمَنْ تَعُولُ: أُمُّكَ وَأَبَاكَ وَأَخْتَكَ وَأَخَاكَ، ثُمَّ أَذْنَاكَ فَأَذْنَاكَ»

*«The hand of the giver is the upper one, and spend first on those who are dependent on you; your mother and father, your sister and brother, then your relatives in order of their closeness to you.»* (An-Nasa'i and Ad-Daraqutni, who graded it *Sahih*)

- When the owner of animals does not feed them, they should be sold or slaughtered, so that they are not tormented with hunger, as tormenting animals is forbidden.

Allāh's Messenger ﷺ said:

«دَخَلَتِ النَّارَ امْرَأَةٌ فِي هِرَّةٍ حَبَسَتْهَا حَتَّى مَاتَتْ جُوعًا، فَلَا هِيَ أَطْعَمَتْهَا وَلَا أَرْسَلَتْهَا تَأْكُلُ مِنْ خَشَاشِ الْأَرْضِ»

*«A woman entered the Fire due to a cat. She locked it up until it died of starvation. She did not feed it, nor did she release it so that it could eat from the varmint of the earth.»* (See earlier.)

## Custody of Children

### Its Definition

Custody refers to providing care and guardianship for a minor until he (or she) reaches the age of puberty.

### Its Ruling

Custody and care of minors is obligatory, in order to guard their bodies, intellects and religion.

## Custody is Whose Obligation?

Caring and upbringing of the children is the parents' obligation. If they are not available, then the closest relatives and so on are responsible. If they are also not present, then the government or the Muslim community should take responsibility of the children.

## Who has more Right to take Custody of the Child for Upbringing?

When the child's parents have separated due to divorce or death, his mother has the most right to his custody for guardianship, as long as she does not get married. This is due to the Messenger of Allāh's statement to a divorced woman who complained to him that her husband wanted to take away her child. He ﷺ replied:

«أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي»

*«You have more right to him as long as you do not marry.»*

(Ahmad, and Abu Dawud, and Al-Hakim graded it *Sahih*)

If she is not available, then the mother of the mother (the child's grandmother) has the most right. If she is not available, then the maternal aunt has the most right. This is because the mother of the mother is considered a mother, and the maternal aunt is considered as having the status of the mother. This is due to the Messenger of Allāh's statement:

«الْخَالَةُ بِمَنْزِلَةِ الْأُمِّ»

*«The maternal aunt is in the position of the mother.»* (Al-Bukhari and Muslim)

If she is not available, then the father's mother (grandmother) has the most right. If she is not available, then the (adult) sister (of the child) has the most right. If she is not available, then the paternal aunt has the most right. If she is not available, then the brother's daughter

has the most right.

If the above-mentioned are all not available, then the responsibility of the child's guardianship should go to his father, grandfather, brother, brother's son, uncle, then his closest male relatives in successive order. The full brother is given preference over the half brother by the same father, and similar is true in respect of the sister and the half sister.

### **When the Right of Guardianship is lost**

The actual purpose of guardianship is to maintain the child's life, and his physical, rational and spiritual upbringing and care. Therefore, the right of upbringing and care of the child will be taken away from whoever is not fulfilling the very aim and purpose of the guardianship. For example, when the mother gets married to a person who is not a relative of the child, her right to custody will be lost. This is due to the statement of the Messenger of Allāh ﷺ:

«... مَا لَمْ تَنْكِحِي»

«As long as you do not marry.»

Since her marriage to a person who is not related to the child, renders her unable to fully maintain and protect the child.

Moreover, in the following situation, the right of custody will be taken away from a female guardian:

- (1) If she is insane or mentally deranged.
- (2) If she has a serious disease, such as leprosy.
- (3) If she is a minor who is immature and has not reached the age of puberty.
- (4) If she is unable to protect the child or guard his body, intellect and religion.
- (5) If she is a disbeliever, due to fear for the child's religion



and beliefs.

### **The Period of Guardianship**

The period of guardianship and care is valid until the young boy reaches the age of puberty. In the case of a young girl, it is until she gets married and has sexual relations with her husband. However, when the wife is separated from her husband, and the mother, or other than her, intends to raise the child independently, she maintains the custody to look after the young girl until she reaches seven years of age. Thereafter, her guardianship should be transferred to her father, since he is more suitable to look after her after seven years old than other female guardians. When the boy reaches the age of seven, he is given the choice between his father and his mother. Whomever of them he chooses to stay with, his guardianship will transfer to that person. When he does not choose anyone of them and his parent dispute about his guardianship, then it should be decided by drawing lots.

### **Maintenance of the Child and paying the Woman Who looks after Him**

The father should pay the living expenses of the child and the wages of the woman who looks after him, according to his financial ability. This is because the woman who looks after the child is like a woman who breast-feeds children and the breast-feeding woman has the right to her due payment:

Allāh said:

﴿إِنِ ارْتَضَعْنَ لَكُمْ فَاَوْفُرْنَ أَجْرَهُنَّ﴾

﴿Then if they give suck to the children for you, give them their due payment.﴾ (65:6)

If she provides the upbringing and care of the children voluntarily, then there will be no due payment for her

service. The maintenance of the child and the pay of the woman for upbringing will be according to the father's financial ability or inability to pay (i.e. what he can afford). Allāh said:

﴿إِنْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِۦ. وَمَن قُدِرَ عَلَيْهِ رِزْقُهُۥ فَلْيُفِيقْ مِمَّا مَلَئَتْهُ اللَّهُ لَا يَجِدْ لَ اللَّهِ تَكْلَفًا  
إِلَّا مَّا أَنشَأَ﴾

*﴿Let the rich man spend according to his means; and the man whose resources are restricted, let him spend according to what Allāh has given him. Allāh puts no burden on any person beyond what He has given him.﴾ (65:7)*

### **The Child's going back and forth between His Father and Mother**

When the child reaches the age of seven, he can choose between his father and mother. If he chooses the mother, he has to stay at night with her while he spends the daytime with his father. If he chooses the father, he can be with him at night and during the day. This is because in his presence during the day with his father, he would usually be more secure, and he would take care of his rearing and education, and usually the mother does not take care of these things.

If he chooses the father, he should not prevent the child from visiting his mother at any possible time. This is because maintaining kinship is an obligation while being undutiful (to parents) is unlawful.

### **Traveling with the Child**

When either of the parent intends to travel with the child and eventually return, the child should be with the one who stays behind (in their land). If such a traveler does not intend to return, the best interest of the child should be considered, as to whether he would be with the traveler or with the one who stays behind. Whoever fulfills the best

interest of the child in respect of his upbringing and care, the child should stay with him. The best interest of the child is what Allāh has meant by his upbringing and care.

### **The Child under Guardianship is a Trust**

The woman who takes care of upbringing and caring for the child must know that it is a trust upon her. She must care for him and guard him. When she feels unable to completely rear and perfectly look after the child, she must hand over the trust to the person who is pious and righteousness in respect of upbringing and care. The woman should not merely make the purpose of her keeping the child in order to get payment from the father, thus making the child stay with her in order to get money.

Therefore, it is obligatory upon the legal guardian of the child as well upon the judges to always look after the best interest of the child in care and upbringing. What is best for the child is receiving proper rearing, physically, intellectually and spiritually, with no consideration for any other matter, as protecting the child is the intent of what Islamic Law means by custody.

## The Inheritance and its Laws

### The Ruling of Inheritance

Inheritance among the Muslims is obligatory according to the Book (Al-Qur'an) and the Sunnah. Allāh the Almighty said:

﴿لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا﴾

«There is a share for men and a share for women from what is left by parents and those nearest related, whether the property be small or large, a legal share.» (4:7)

And He said:

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلَّذِي يُلِدُكَ إِذَا ذَكَرَ مِثْلَ حَظِّ الْأُنثَيَيْنِ﴾

«Allāh commands you concerning your children's (inheritance): to the male, a portion equal to that of two females.» (4:11)

And His Messenger ﷺ said:

«الْحَقُّوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَلِأَوْلَى رَجُلٍ ذَكَرَ»

«Give the Farā'idh (the shares of inheritance that are prescribed in the Qur'an) to those who are entitled to receive it, and whatever is left is for the closest male relative (of the deceased).» (Al-Bukhari and Muslim)

And he ﷺ said:

«إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ، فَلَا وَصِيَّةَ لِرَاثٍ»

«Verily Allāh has given everyone who has a right his right, so there is no bequeathal for the person who inherits.» (Abu Dawud and others of the Sunan compilers)

## The Reasons for Inheritance

Inheritance is not confirmed except for one of three reasons. They are as follows:

**1. An-Nasb (Family Relations):** This means the relatives, and it is that the inheritor should be one of the parents of the deceased who leaves inheritance or his children or his kin, like his brothers and their children and his uncles and their children. This is due to the statement of Allāh the Almighty:

﴿وَلِكُلِّ جَعَلْنَا مَوَالِيَ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ﴾

﴿And to everyone, We have appointed heirs of that (property) left by parents and relatives.﴾ (4:33)

**2. An-Nikah (Marriage):** This is the correct (valid) contract of marriage, even if there is no consummation and the two spouses have not yet been alone together. This is due to the statement of Allāh the Almighty:

﴿وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ﴾

﴿And in that which your wives leave, your share is a half.﴾ (4:12)

The two spouses also inherit from each other in a situation where a revocable divorce was pronounced, and also an irrevocable divorce if he (the husband) divorced her during an illness from which he died.

**3. Al-Wala':** This is when a man frees a male or female slave and because of that, he has his (the slave's) *Wala'* (special relationship between the ex-slave and his manumitter). Therefore, if the manumitted slave dies and he has no one to inherit from him, the man who freed him inherits from him due to his manumitting him. This is due to the Prophet's statement:

«الْوَلَاءُ لِمَنْ أَعْتَقَ»

«The Wala' is for the manumitter.» (Al-Bukhari and Muslim)

## Things that Prevent Inheritance

In some cases the reason for inheritance may be present, but something prevents it and thus the person does not inherit because of that preventive thing. These preventive things are as follows:

**1. Disbelief:** The Muslim relative does not inherit from the disbeliever, nor does the disbeliever inherit from his Muslim relative. This is due to the Prophet's statement:

«لَا يَرِثُ الْكَافِرُ الْمُسْلِمَ، وَلَا الْمُسْلِمُ الْكَافِرَ»

«The disbeliever does not inherit from the Muslim and the Muslim does not inherit from the disbeliever.» (Al-Bukhari and Muslim)

**2. Murder:** The murderer does not inherit from the person that he murdered. This is a punishment for him because of his crime if the murder was intentional. This is due to the Prophet's statement:

«لَيْسَ لِلْقَاتِلِ مِنْ تَرِكََةِ الْمَقْتُولِ شَيْءٌ»

«The murderer has no right to anything left by the murdered.»  
(Ibn 'Abdul-Barr, who graded it *Sahih*.)

**3. Slavery:** The slave does not inherit, nor is he inherited from, regardless of whether he is a totally owned slave or a slave that is not fully owned - like the slave who is partially owned, the slave that has a contract of manumission and the *Umm-ul-Walad* (the female slave who gives birth to the child of her master and thus she is set free upon his death). This is because all of these (that are not complete slaves) are still under the ruling of slavery. Some of the people of knowledge have excluded the partially owned slave from this ruling. They said, "He inherits and is inherited from according to the amount of his freedom." This is due to the report from Ibn 'Abbas that the Prophet ﷺ said:

«فِي الْعَبْدِ يُعْتَقُ بَعْضُهُ: يَرِثُ وَيُورَثُ عَلَى قَدْرِ مَا عَتَقَ مِنْهُ»

«Concerning the slave who has been partially freed, he inherits and is inherited from according to the amount he has been freed.» (The author of *Al-Mughni* mentioned it.)

**4. Fornication or Adultery:** The child who is born as a result of fornication or adultery does not inherit from his father and his father does not inherit from him. Such a child only inherits from his mother and she inherits from him, with his father having no inheritance rights. This is due to the Prophet's statement:

«الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاقِرِ الْحَجَرُ»

«The child belongs to the (owner of the) bed and the adulterer gets the stone.» (Al-Bukhari and Muslim)

**5. Al-Li'an (Divorce by Invoking Curse):** The child of two spouses, who get a divorce by invoking the curse of Allāh (regarding an accusation of adultery between them), does not inherit from his father who denies him and the father does not inherit from him. This is based upon analogy between this child and the child of adultery.

**6. The Stillborn:** The child that is born dead from its mother (stillborn), and it does not have a startling cry at its birth, does not inherit, nor do others inherit from it. This is due to the lack of life that is followed by death, by which inheritance is attained.

## Conditions of Inheritance

The conditions for the correctness of inheritance are as follows:

The absence of any of the preventive things that have been previously mentioned, as the preventive things nullify inheritance.

The person who is inherited from must be deceased, even if he is "judged" as deceased. An example of this is when the judge rules that a person who is missing is dead. This is

due to a consensus (*Ijma'*) that the living person is not inherited from.

The inheritor must be alive on the day of the death of the person who is leaving the inheritance. So if one of a woman's children dies and she has an unborn child in her womb, then this unborn child has the right to inherit from its brother (who died) if it is born alive. This is due to the fact that it was certainly alive (in the womb) on the day of its brother's death. If the woman conceived the baby after the death of its brother, the baby has no right to inherit from his brother who died, because he was not created (conceived) until after (the brother's death).

### **Male Inheritors**

The male inheritors are of three categories:

1. The husband. The husband inherits from his wife if she dies, even if he had pronounced a divorce on her, as long as she did not complete her waiting period (*'Iddah*). If she completed her waiting period, he does not inherit from her.
2. The manumitter (who frees a slave) or his male relatives if he is not present (i.e. alive) at the time of the death of the freed slave.
3. The relatives, and they are the forefathers relations, the offspring and the kinfolk. The forefathers include the father, the grandfather and any forefathers of the grandfather. The offspring include the son, the grandson and other direct descendants no matter how far down the line. The kinfolk are the other relatives. They include the brothers and their children, no matter how far down they descend. It also includes the brothers of the same mother (i.e. who have different fathers). The distant relatives include the uncle and the son of the uncle (cousin), no matter how far down the family line they descend. It also makes no difference whether they are full-blooded or only from the same father (i.e. having different mothers).



These are the male inheritors and it is unimaginable that they will ever all be present (existent) to take a share in one inheritance. This is because some of them block off others. The father blocks off the grandfather and the half brothers from the same mother, and the son blocks off the brother, and the brother blocks off the uncle and so on. If they all are present (existent) to claim inheritance from a single inheritance, none of them inherit except for three: the husband, the son and the father.

### **The Female Inheritors**

1. The wife.
2. The female manumitter (who frees a slave).
3. The relatives: and they are of three categories. The parental women: and they are the mother and the grandmother on either the mother's or the father's side. The offspring: and they are the daughter, the son's daughter (granddaughter) and any descending female grandchildren (i.e. through the males). The kin: and this is the female relative, who is only the sister.

Note: The maternal and paternal aunts, the daughter's daughter (granddaughter), the daughter's son (grandson), the brother's daughter (niece) and the uncle's daughter (cousin) do not inherit at all.

### **An Explanation of the Shares of Inheritance**

The designated shares of inheritance in the Book of Allāh the Almighty, in *Surah An-Nisa'* are six. Their explanation is as follows:

1. **A Half:** Five individuals inherit half and they are as follows:

The husband, if the deceased wife did not have a son or a grandchild by her son, whether it is a male or female.

The daughter, if she does not have a brother or sister or

more (siblings). She does not inherit half unless she is alone (i.e. an only child).

The daughter of the son (granddaughter) if she is alone and there is no son of a son (grandson) along with her as well.

The full sister (from the same two parents) if she is alone, having no brother along with her, nor a father, nor a son, nor the son of a son (grandson).

The sister by the same father (but not the same mother) if she is alone and she does not have a brother along with her, nor a father, nor the son of a son (grandson).

**2. A Fourth:** Only two people inherit a fourth and they are the following:

The husband, if the deceased wife has a son or a grandchild by her son, whether it is a male or female.

The wife, if her deceased husband did not have a son, nor a grandchild by his son, whether it is a male or a female.

**3. An Eighth:** Only one person inherits an eighth and it is the wife, and if there is more than one wife they split it.

This is when the deceased husband has a son, or a grandchild by the son, whether it is a male or a female.

**4. Two Thirds:** Four categories of people inherit two thirds:

Two or more daughters if there is no son, meaning they do not have a brother.

Two daughters of the son (granddaughters) or more if they are alone without there being a child (of the deceased), whether a male or a female, and no grandson by the son, who would be their brother.

Two full sisters or more if they are alone without there being a father, or any children, whether male or female (of the deceased), or a full brother.

Two sisters or more by the same father (i.e. not by the mother) if they are alone without any of those mentioned

for two full sisters (as mentioned above), as well as not having a brother by their father.

**5. A Third:** Three people inherit a third and they are the following:

The mother, if the deceased does not have a child or grandchild by a son, whether male or female, nor a group of siblings, meaning two or more, whether they are males or females.

Brothers by the same mother, even if they are numerous, meaning two or more, and the deceased does not have a father or grandfather, nor a child or grandchild by a son, whether male or female.

The grandfather, if he is with siblings (of the deceased). The third will be more abundant and plentiful for him if the number of siblings is more than two males (i.e. brothers) or four females (i.e. sisters).

**Note about the Remaining Third:**

1. If a woman dies and leaves behind only her husband, her father and her mother, then her matter (of inheritance) is in six (shares). The husband receives half (of her inheritance), which is three (shares), her mother receives a third of the remaining half, which is one (share) and her father receives the two remaining (shares) since he is the remaining male relative.

2. If a man dies and leaves his wife, his mother, his father and no one else, then the matter (of his inheritance) is in four (shares). The wife receives a fourth, which is one (share), the mother receives a third of what remains, which is one (share), and the two remaining shares are for the father since he is the remaining male relative.

In both of these situations the mother does not inherit a third of what is left as inheritance. She only inherits a third of what remains of the inheritance that is left (i.e. after the other designated persons receive their shares). This is how

'Umar, may Allāh be pleased with him, ruled and these two situations became known as the 'Umariyyatain (the two 'Umar situations).

**6. A Sixth:** Seven people inherit a sixth and they are the following:

The mother, if the deceased has a child or a grandchild by a son, or he has a group of siblings, meaning two or more, whether males or females, and whether they are full-blooded or by the same father only or by the same mother only. It also makes no difference whether they are inheritors or they are blocked from receiving any of the inheritance.

The grandmother, if the deceased does not have a mother, and she inherits from him alone if she is the only grandmother. If there is another grandmother with her on her same level (of family lineage), she divides it in half and shares it with her.

Note: The grandmother that is fundamentally considered in the inheritance is the mother of the mother (i.e. maternal grandmother). However, the mother of the father (i.e. the paternal grandmother) is only considered like the mother of the mother.

The father, who inherits from the deceased in any case, regardless of whether the deceased has a child or not.

The grandfather, who inherits from the deceased only if there is no father, because he takes the place of the father.

The sibling from the same mother (but not the same father), whether it is a male (half brother) or female (half sister). The half-sibling inherits from the deceased if he does not have a father or a grandfather or a child or a grandchild by a son, whether male or female. This is under the condition that the half brother or half sister by the same mother is alone (i.e. an only child) and does not have a sibling.

The daughter of the son (grand daughter) inherits from the deceased if she is with one daughter (of the deceased), and

she does not have a brother or the son of her maternal uncle (her cousin), who is the same as her in level of kinship. It makes no difference whether there is one (grand daughter) or more. In the inheritance a sixth is for the daughter of the son (grand daughter) or his daughters.

The sister by the same father (but not the same mother) if she has a full-blooded sister and she does not have another brother by the same father, and (the deceased has) no mother or grandfather or son or grandson by a son.

### ***At-Ta'sib***

#### **The Definition of *Al-'Asibah***

The technical definition of *Al-'Asibah* is the person who gets all of the wealth if he is alone (without any other claimants to the inheritance) or what is left over after the shares of inheritance are distributed, if there is anything left. The '*Asibah* is deprived of receiving any of the wealth if nothing remains after the shares of inheritance are distributed from the wealth left by the deceased. This is due to the Prophet's statement that is recorded in the *Sahih*:

«الْحَقُّوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَلِأَوْلَى رَجُلٍ ذَكَرَ»

«Give the *Fara'idh* (shares of inheritance designated in the *Qur'an*) to those who are entitled to them and whatever is left over belongs to the closest male relative (of the deceased).»

#### ***Al-'Asibah* are of Three Categories:**

1. '***Asib bi-Nafsihi***: This is the father, the grandfather and so forth in ascending lineage. It also includes the son, and the son of the son (grandson) and so forth in descending lineage. It also includes the full brother and the half brother by the same father, and the son of the full brother (nephew) and the son of the half brother by the same father and so forth in descending lineage. It also includes the

father's full brother (uncle) and his half brother by the same father, and the son of the father's full brother (cousin) and the son of the father's half brother by the same father and so forth in descending lineage. It also includes the person who manumits a slave (in reference to a deceased slave), whether the manumitter is a male or female. The male relatives of the manumitter who are themselves direct relatives (of the manumitter) are also included in this category, and so is the *Bayt-ul-Mal* (i.e. State Treasury).

**2. 'Asib bi-Ghairihi:** This is every female who gets a portion of what remains due to relationship to a male. Thus, she inherits with him according to the principle that the male gets twice the amount of the female. These women are the following:

- The full sister who inherits with her full brother.
- The half sister by the same father who inherits with her half brother by the same father.
- The daughter inherits with her brother (the son).
- The granddaughter, by the son, inherits with her brother or the grandson by a (different) son, if she does not have a designated share (*Fardh*). If she has a designated share (*Fardh*), she does not get a share of what remains after distribution of the inheritance with the great-grandson by the son (who is below her in the family line). This is, for instance, if a man dies and leaves a daughter, a granddaughter by a son and a great-grandson by a son. In this case the daughter gets half and the granddaughter by the son gets a sixth, which completes two-thirds. The remainder (one-third) goes to the great-grandson due to *At-Ta'sib* (i.e. he is the closest remaining male relative). If the deceased leaves a granddaughter by a son and a great-grandson by a son, then the granddaughter by the son gets half as her designated share (*Fardh*) of the inheritance and the remaining half goes to the great-grandson due to *At-Ta'sib* (i.e. he is the closest remaining male relative).

If the deceased leaves two granddaughters by a son and a great-grandson by a son, then the two granddaughters by the son get two thirds as their designated share (*Fardh*) of the inheritance and the great-grandson gets the remaining (one third) due to *At-Ta'sib* (i.e. he is the closest remaining male relative). All of this is when the granddaughter by the son is equal to the grandson by the son in the level of family lineage, or higher than him. However, if she is lower than him (for example, if she is the great-granddaughter and he is the grandson) by a degree or more of family lineage, then he blocks her completely and thus she does not inherit at all.

**3. 'Asib ma'a Ghairhi:** This is every female who becomes 'Asibah (one who gets the remains of the inheritance due to family relations) when she is left along with another woman. These are the following: The full sister or more (i.e. sisters) along with the daughter, or daughters, or along with the granddaughter by the son or the granddaughters. The half sister by the same mother is just like the full sister in all of this. Therefore what remains for the daughter or daughters or the granddaughter or granddaughters, the sister inherits (gets) it if she is alone or with her sisters who are equal to her in family relations if she has sisters. It should be noted that the full sister here has the status of the full brother and thus she blocks off the half sister by the same father. Also, the half sister by the same father has the status of the half brother by the same father and thus she absolutely blocks off the son of the brother (nephew) of the deceased.

### **Note: The Issue of Sharing**

If a woman dies and leaves behind a husband, a mother, half brothers by the same mother and one full brother or more, then the inheritance is in six (shares). The husband gets half, which is three (shares). The mother gets one sixth, which is one (share). The half brothers by the same mother get one third, which is two (shares). Thus, nothing

is left for the full brother of the inheritance, as he is the nearest male relative (*Al-'Asib*). *Al-'Asib* does not get anything if the designated shares of the inheritance (*Fara'idh*) are used up. This is what has been designated as the inheritance shares in this issue.

However, 'Umar, may Allāh be pleased with him, ruled that the full brother or brothers are made to share with the half brothers by the same mother in the third that they get. Therefore, they divide the third between themselves equally. The full brother is considered the same as the half brother by the same mother and the female (sister) is considered just like the male (brother). For this reason, this situation has been called *Al-Mushtarikah* or *Al-Mushtarakah* (sharing) or *Al-Hajariyyah*, because the full brothers said to 'Umar, may Allāh be pleased with him, when he initially forbade them from receiving any inheritance, "Suppose that our father was a stone. Is not our mother one (i.e. we all have the same mother)? So how can we be deprived of receiving any inheritance while our brothers inherit?" Hence, 'Umar was convinced and he ruled that they share with their half brothers by the same mother in a third of the inheritance.

### ***Al-Hajab (Blocking Inheritance)***

#### **Its Definition**

*Al-Hajab* is preventing (someone) from receiving all or some of the inheritance.

#### **The Two Types of *Al-Hajab***

##### ***Hajab-un-Naqs:***

This means that the inheritor is moved from receiving a larger share of the inheritance to a smaller share of the inheritance. It also could mean that he is moved from receiving a share of the inheritance to receiving what is left after the inheritance is divided (i.e. *At-Ta'sib*), or vice versa (from *At-Ta'sib* to an inheritance share).



**Those who block others from the inheritance by *Hajab-un-Naqs* are five people:**

1. The son, the grandson by the son and so forth in descending lineage. They block the husband from receiving half, making his inheritance a fourth, and they block the wife from receiving a fourth, making her inheritance an eighth. They also move the father and grandfather from *At-Ta'sib* (getting the remainder of what is left after the inheritance is divided) to receiving a sixth of the designated inheritance (*Fardh*).

2. The daughter, who blocks the granddaughter by the son from receiving half, making her inheritance a sixth, she also blocks more than one granddaughters by the son from receiving two thirds, making their inheritance a sixth; and the full sister or half sister by the father from receiving half, making their inheritance a sixth. She also blocks the two full sisters or half sisters by the same father by changing their inheritance from two thirds to *At-Ta'sib* (getting what remains after the inheritance is divided). She blocks the husband by changing his inheritance from half to a fourth, and the wife by changing her inheritance from a fourth to an eighth. She blocks the mother by changing her inheritance from a third to a sixth. She also blocks the father and the grandfather by moving them from *At-Ta'sib* (getting the remainder of what is left after the inheritance is divided) to receiving a sixth of the inheritance. These people still may receive what is left through relationships by *At-Ta'sib* if anything remains (after dividing the shares of inheritance).

3. The granddaughter by the son. She blocks whoever is beneath her in family lineage from the granddaughters by the son (i.e. the great-granddaughters, etc.) if there are no male relatives to displace them, such as a brother or son of a paternal uncle (nephew) who are equal to them in their level of family lineage. Thus, one (a granddaughter who is beneath her) is changed from receiving half to receiving a

sixth of the inheritance. If there are two or more (granddaughters beneath her), they move from two thirds to receiving a sixth. She (the granddaughter) also blocks the full sister or the half sister by the father from receiving half of the inheritance to *At-Ta'sib* (getting what remains after the inheritance is divided). She also blocks two full sisters or two half sisters by the father from receiving two thirds of the inheritance to *At-Ta'sib* (getting what remains after the inheritance is divided). Likewise, she blocks the husband, the wife, the mother, the father and the grandfather in the same manner that the daughter blocks them.

4. Two or more brothers block the mother by changing her inheritance from a third to a sixth.

5. One full sister blocks a half sister from the same father by changing her inheritance from a half to a sixth if she does not have a half brother by the same father who would be considered his (the deceased's) closest male relative. She also blocks two half sisters by the same father by changing their inheritance from two thirds to a sixth if they do not have a half brother by the same father who they are considered with as the closest male relative for *At-Ta'sib*.

### ***Hajab-ul-Isqat* (Complete Blocking):**

*Hajab-ul-Isqat* means preventing the inheritor from receiving all of what he would have inherited if there were no one to block him from the inheritance. Those who completely block others from receiving any inheritance are nineteen people:

1. The son. The grandson and granddaughter do not inherit with him and neither do the brothers or the uncles (of the deceased).

2. The son of the son (grandson). The great-grandson and great-granddaughter who are beneath him in family lineage do not inherit with him. He also blocks everyone who is blocked from inheritance by the son, exactly the same.

3. The daughter. The half brother (of the deceased) by the same mother does not inherit with her at all.

The daughter of the son (grand daughter). The half brother (of the deceased) by the same mother does not inherit with her at all.

5. Two daughters or more. The half brother (of the deceased) by the same mother does not inherit with them at all. Likewise, the daughter or daughters of the son (grand daughters) are also blocked from inheritance by the daughters, unless there is a male relative, like a brother or son of a paternal uncle (cousin) who she is considered with as the closest male relative (for *At-Ta'sib*) and they are equal with her in the family degrees.

6. Two granddaughters or more. The half brother (of the deceased) by the same mother does not inherit with them, nor does a great-granddaughter or great-granddaughters, unless she (the great-granddaughter) has a male relative, like a brother or son of a paternal uncle (cousin) who she is considered with as the closest male relative (for *At-Ta'sib*) and they are equal with her in family degrees.

7. The full brother. The half brother by the same father does not inherit with him at all, nor does the paternal uncle.

8. The son of the full brother (nephew). The paternal uncle does not inherit with him at all, nor does the son of the half brother by the same father. Likewise, those who are beneath him in family lineage, such as the children of the children of the brother, do not inherit with him at all.

9. The half brother by the same father. The paternal uncle does not inherit with him at all, nor does the son of a full brother or the son of a half brother.

10. The son of the half brother by the same father. The paternal uncle does not inherit with him at all, nor whoever is beneath him in family lineage, such as children of the children of the brother.

11. The paternal uncle. The paternal uncle who is a half brother of the father by the same father only does not

inherit with him at all, nor do those who are beneath him from the children of the uncle.

12. The son of the paternal uncle (cousin). The son of the paternal uncle who is a half brother of the father by the same father does not inherit with him, nor does whoever is beneath him in family lineage, such as the children of the children of the uncle.

13. The paternal uncle who is a half brother of the father by the same father. The son of the paternal uncle (cousin) does not inherit with him at all.

14. The full sister when there is a daughter. The half brother by the same father does not inherit with her. This is because the full sister when there is a daughter is considered as having the status of the full brother, and the half brother by the same father does not inherit in the presence of a full brother.

15. The full brother when there is a granddaughter by the son. The half brother by the same father does not inherit with him.

16. Two full sisters. The half sister by the same father does not inherit with them, unless she has a brother who she is considered with as the closest male relative (for *At-Ta'sib*).

Based upon this, the half sister by the same father when there are two full sisters is considered as having the status of the granddaughter by the son when there are two daughters present. She falls from the list of inheritors, unless she has a brother or the son of a paternal uncle (cousin), who she is considered equal with in family relations, as the closest male relatives (for *At-Ta'sib*).

17. The father. The grandfather does not inherit with him, nor does the grandmother by a father. Also, the uncle does not inherit with him at all, and nor do the brothers.

18. The grandfather. His father (the great-grandfather) does not inherit with him, and nor do half brothers by the same

mother. Also, the uncle does not inherit with him at all, and neither do the children of the brother.

19. The mother. The grandmother does not inherit with her at all.

### The Case of the Grandfather

The grandfather, the children of the son (grandchildren), the maternal uncles, the children of the maternal uncles (cousins) and the children of the brothers do not have any clear text reported concerning them in the Qur'an regarding their inheritance. Yet, the statement of the Messenger ﷺ:

«أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا»

*«Give the Fara'idh (shares of the inheritance prescribed in the Qur'an) to those who are entitled to receive them...»<sup>[1]</sup>*

affirms and verifies the fact that they inherit. Likewise, the grandson and granddaughter by the son are included in the meaning of the word child in Allāh the Almighty's statement:

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ﴾

*«Allāh advises you concerning your children.»* (4:11)

For this reason there is a consensus (*Ijma'*) that the previously mentioned people inherit. However, the

<sup>[1]</sup> This *Hadith* has preceded and the proof in it is the Prophet's statement :

«فَمَا بَقِيَ فَلْأَوْلَى رَجُلٍ ذَكَرَ»

*«Then whatever remains, should be given to the closest male relative (of the deceased).»*

For verily it is a textual proof regarding the inheritance of the grandfather, the children of the son (grandchildren), the maternal uncles and their children. Likewise, it is a textual proof for the (inheritance of) the brothers and their children.

grandfather is included in the meaning of Allāh the Almighty's statement:

﴿وَوَرَّثَهُ آبَاؤُهُ﴾

﴿And his parents inherit from him﴾ (4:11)

and His statement:

﴿وَلِلَّأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا الشُّدُشُ﴾

﴿And each one of his parents get a sixth.﴾ (4:11)

Thus, the grandfather is like the father in that he inherits a sixth when there is a child (of the deceased) or a child of a child (grandchild of the deceased). Also, he (the grandfather) gets all of the wealth if he is alone, and he also gets what is left over of the inheritance if there is anything. The grandfather is no different than the father, except in the situation of existing brothers. For verily the father removes all of the brothers (from the list of possible inheritors) if he is present, and the grandfather inherits with them. This is because he is considered equal with them in relationship to the deceased, as the brothers are related to the deceased through their father and the grandfather is related to him likewise through the father, who is his son.

From this the grandfather has five possible cases. They are as follows:

1. That he basically has no inheritor with him, in which case he gets all of the wealth by *At-Ta'sib* (being the closest surviving male relative).
2. That he only has designated inheritors with him. In this case he is given a sixth as his designated inheritance and if anything is left over after the designated shares are distributed, he inherits it by *At-Ta'sib* (being the closest surviving male relative).
3. That he has a son (of the deceased) and a grandson (of the deceased) with him, in which case he gets a sixth as his designated inheritance and nothing else.

4. That there are only brothers (of the deceased) with him. In this case he is given the most between either a third of the wealth, or dividing the wealth up equally (with the brothers). He will get more in dividing the wealth up equally if the number of brothers is not more than two or the same number of them of sisters.

5. That there are brothers (of the deceased) with him and people who get designated shares of the inheritance. In this case he is given whatever is more between a complete sixth of the inheritance or a third of what remains after the shares of the inheritance are divided or he shares equally with the brothers (by *At-Ta'sib*). If the shares of inheritance are distributed with nothing remaining afterwards, the brothers do not receive anything. However, the grandfather is not left out, as he is given a sixth of the inheritance, even if the matter becomes burdensome because of him.

### **Notes of Importance:**

#### **Concerning Calculation**

If a grandfather, full brothers and half brothers by the same father are all considered together, then the full brothers count the half brothers in their favor against the grandfather. They divide the inheritance with him (the grandfather) in consideration of the half brothers (i.e. counting them in it), then they block the half brothers from the inheritance and they (the full brothers) take their (the half brothers') share without (counting) the grandfather. An example of this is if there is a grandfather, a full brother and a half brother by the same father. The inheritance is thus divided counting three shares, the grandfather having one, the full brother having one and the half brother having one. However, the full brother, after counting the half brother in the division against the grandfather, takes the share of the half brother. This is because the full brother blocks the half brother by the same father from receiving inheritance, as was mentioned previously.

### Concerning Al-Akdariyyah

If a woman dies leaving behind her husband, her mother, her sister (whether full or half) and her grandfather, then the shares of inheritance are divided into six parts, as there is a sixth involved in it. The husband gets half, which is three shares. The mother gets a third, which is two shares. The sister gets half, which is three shares. The grandfather gets a sixth, which is one share. Thus, the shares end up being nine! In such a case, the grandfather requests the sister to divide her share with him. So his one share is combined with her three shares becoming four and they divide it with the principle that the male gets double the share of the female (see the chart).

3			
	6	9	27
Husband	3	3	9
Mother	2	2	6
Sister	3	3	4
Grandfather	1	1	8

This issue has been singled out for mentioning because by necessity the sisters are not given any share of inheritance with the grandfather. This is because he (the grandfather) displaces them as a male relative just as a brother does with a sister. However, in this issue the sister is given a share of the inheritance, which is half. Then the grandfather goes to her and his share is combined with her share. Then they divide their portion with the male getting twice the amount of the female. Thus, the sister ends up inheriting a sixth and the grandfather a third. This is almost the opposite of what has been designated as their shares of the inheritance. This process has been named *Al-Akdariyyah* due to its *Takdir* (troubling) the sister, as she is allotted a large share of the inheritance, but she only takes a small share.



## Adjusting the Shares of Inheritance

The Foundations of the Shares of Inheritance are seven: The two, the three, the four, the six, the eight, the twelve and the twenty-four.

A half share makes two portions. A third share makes three portions. A fourth share makes four portions. A sixth share makes six portions. An eighth share makes eight portions. If a fourth share and a sixth share are combined in an inheritance, then this makes twelve shares. If an eighth share and a sixth share or a third share are combined, this makes twenty-four shares.

Examples:

In the case of a husband and a brother, there are two shares. Half for the husband and half for the brother.

In the case of a mother and a father, the matter is in three shares. The mother gets a third, which is one share, and the remainder (two shares) is for the father due to *At-Ta'sib* (being the closest surviving male relative).

In the case of a wife and a brother, the matter is in four shares. The wife gets a fourth, which is one share, and the remainder (three shares) is for the brother due to *At-Ta'sib* (being the closest surviving male relative).

In the case of a mother, a father and a son, the matter is in six shares. The mother gets a sixth, which is one share. The father gets a sixth, which is one share. And the remainder (four shares) is for the son due to *At-Ta'sib* (being the closest male relative after the division of shares).

In the case of a wife and a son, the matter is in eight shares. The wife gets an eighth, which is one share, and the remainder (seven shares) is for the son due to *At-Ta'sib* (being the closest surviving male relative).

In the case of a wife, a mother and a paternal uncle, the matter is in twelve shares because a fourth and a third are both involved in it. The wife gets a fourth, which is three shares. The mother gets a third, which is four shares. And the remainder (five shares) is for the uncle due to *At-Ta'sib* (being the closest surviving male relative).

In the case of a wife, a mother and a son, the matter is in twenty-four shares because an eighth and a sixth are both involved in it. The wife gets an eighth, which is three shares. The mother gets a sixth, which is four shares. And the remainder (seventeen shares) is for the son due to *At-Ta'sib* (being the closest surviving male relative).

### ***Al-'Awl***

#### **Its Definition**

*Al-'Awl* technically means an increase in the number of shares and a decrease in their amounts.

#### **Its Ruling**

The Companions (may Allāh be pleased with them) agreed that using it is acceptable, with the exception of Ibn 'Abbas. For this reason, it is a practice that is found among the general populace of the Muslims.

#### **What Cases do *Al-'Awl* Enter Into?**

*Al-'Awl* enters into only three fundamental cases. They are the case of six shares, twelve shares and twenty-four shares.

The six shares may be changed to up to ten shares by the odd individual and the husband. The twelve shares may be changed to up to seventeen shares only by the odd individual. The twenty-four shares may be changed one time to up to twenty-seven shares by the odd individual.

Examples:

1. Six shares becoming seven shares: In the case of a

husband, a full sister and a grandmother, the shares of inheritance are six (because a sixth is involved). The husband gets half, which is three shares. The full sister gets half, which is three shares. The grandmother gets a sixth, which is one share (but the six shares have been used up). Therefore, the shares are changed to seven for the sake of an odd individual.

2. Six shares becoming eight shares: In the case of a husband, two full sisters and a mother, the shares of inheritance are six (because a sixth is involved). The husband gets half, which is three shares. The two full sisters get two thirds, which is four shares. The mother gets a sixth, which is one share. Therefore, the shares are changed to eight for the sake of the husband.

3. Twelve shares becoming thirteen shares: In the case of a wife, a mother and two half sisters by the same father, the shares of inheritance are in twelve, because a sixth and a fourth are involved. Thus, the wife gets a fourth, which is three shares. The mother gets a sixth, which is two shares. The two sisters get two thirds, which is eight shares. Therefore, the shares are changed to thirteen shares.

4. Twenty-four shares becoming twenty-seven shares: In the case of a wife, a grandfather, a mother and two daughters, the shares of inheritance are twenty-four because an eighth and a sixth are involved. The wife gets an eighth, which is three shares. The grandfather gets a sixth, which is four shares. The mother also gets a sixth, which is four shares. The two daughters get two thirds, which is sixteen shares. Therefore, the shares are changed to twenty-seven.

## **The Manner of Establishing a Basis for the Shares**

### **The Situations of the Inheritors**

The inheritors may either be:

(1) only a group of male relatives who do not get a designated share of the inheritance or

(2) males and females (who do not get a designated share), or they may be

(3) relatives who do not get a designated share along with those who get a designated share of the inheritance, or they may be

(4) only those who get a designated share of the inheritance.

Therefore, if they are only a group of male relatives who do not get a designated share of the inheritance, the matter of shares is established according to their number. For example, in the situation of three children, the matter of shares is three. This is based upon their head count and each one of them receives one share. If they are a group of male and female relatives who do not get a designated share of the inheritance, the matter is the same, with the exception that the male gets twice the share of the female. For example, if it is a son and two daughters, the matter of shares is four. Their total head count is considered, and the son gets two shares (as he is counted as two when counted with females) and each daughter gets one share.

If they (the family members who do not get a designated share) have someone with them who gets a designated share, then the matter of shares is based upon the position of that designated share. For example, if there is a husband, a son and a daughter, then the matter of shares is four. This is due to the position of the designated share of the husband being a fourth. Thus, the husband gets one share, and the remainder goes to the son and daughter, with the son getting two shares and the daughter getting one, as the male gets twice the amount of the female, and so forth. (See the Chart)

Matter of Shares: 4	
Husband	1
Son	2
Daughter	1

### **The Four Considerations**

If the matter of shares is regarding one or more persons who get a designated share of the inheritance, then a

distinct consideration is made between the two positions or more (if there are more involved). This is done by the four considerations, which are *At-Tamathul*, *At-Tadakhul*, *At-Tawafuq* and *At-Takhaluf*. This is in order to establish a foundation for the matter of shares (i.e. how many in total) and adjusting them.

The consideration of *At-Tamathul* is used for example, if two inheritors both get a half or they both get a sixth. This is sufficient for one of the two who have the same designated share. Therefore, it is made the foundation in the matter of the shares and the division of the inheritance takes place according to it. For example, if there is a husband and a sister, the husband gets half and the sister gets half. Thus, the division is sufficient for one of the two positions because they are the same (i.e. they get the same share). Thus, two shares are made the basis for this issue of shares, and so forth. (See the chart)

Matter of Shares: 2	
Husband	1
Sister	1

The consideration of *At-Tadakhul* is for example, six shares and three shares. In this case it suffices to use the larger of the two numbers as the basis, as the smaller number is included under the larger. Therefore, the greater number is made the foundation for the shares of inheritance and the division takes place according to it, and so forth. Therefore, in the matter of six shares, if the inheritors are mother, two half brothers and uncle, the mother gets a sixth, which is one share, the half brothers by the same mother get a third, which is two shares, and the remaining three shares go to the nearest male relative. Dividing the shares into six shares suffices in this situation, thus it is made the foundation for it, because a third is included in a division into sixths. (See the chart)

Matter of Shares: 6	
Mother	1
Two half brothers	2
Uncle	3

In the situation of *At-Tawafuq*, the least ratio is looked at between the two numbers that are together. Then the common fraction (*Wafq*) of one of them is multiplied by the total number of the other and the result is made the basis for the matter of total shares. Thus, the division of the shares is made according to this. For example, in the case of a husband, a mother, three sons and a daughter. The husband gets a fourth and its basis is in four shares. The mother gets a sixth and its basis is in six shares. The least common ratio between the two positions (the fourth and the sixth) is a half, as each of the two numbers has a half (its original shares can be divided in half). Then the half of one of them is multiplied by the complete number of the other. (In other words half of four is two and half of a six is three, and if you multiply half of either of them by the other the result is twelve.) Thus, the result is twelve shares and it is made the basis of the division, and so forth. (See the chart)

Matter of Shares: 12	
Husband	3
Mother	2
Son	2
Son	2
Son	2
Daughter	1

In *At-Takhaluf*, it is that the two numbers do not agree in any ratio (fraction), like three shares and four shares, for example. In this situation it suffices to just multiply the total number of one of them by the other, and the resulting number is made the basis for the matter of total shares. The division of shares is carried out in this manner in the situation of a husband, a mother and a full brother. The husband gets a half, which is based on two shares. The mother gets a third, which is based on three shares. The ratio between them is different, so the two are multiplied by three and the result is six. Therefore, the basis for the matter of shares is six and the inheritance is divided up according to it. (See the chart)

Matter of Shares: 6 (2x3=6)	
Husband	3
Mother	2
Full brother	1

### ***Al-Inkisar***

*Al-Inkisar* (breaking up) is that some of the shares are not distributed among the inheritors. Hence, the consideration is between the shares and their inheritors. If they agree in division, the agreeable denomination of the inheritors is taken and placed on top of the basis of the inheritance shares, and then it is multiplied by them. Then the resulting figure corrects the distribution of inheritance shares. Then it is placed in another column after the fundamental column. Then the amount that is in the hand of every inheritor is multiplied by the agreeable denomination that has been placed on top of the basis of the inheritance shares. The result is placed in front of him under the correcting column like so.

An example is the case of a husband, two sons and two daughters. If their denominations of shares differ (*At-Takhaluf*) (as one of them is left out), the total number of the inheritors is placed above the shares of inheritance and then multiplied by them. The result makes the amount of shares correct. Then they are placed in another column and that which every inheritor has is multiplied by the number that is above the number of shares. The result is put in front of the person's row, in the column for the correcting group, and so forth. (See the chart)

2		
Matter of Shares: $4 \times 2 = 8$		
Husband	1	2
Son	3	2
Son		2
Daughter		1
Daughter		1

An example of this is a wife, a son and a daughter. The matter of inheritance is in eight shares. The wife gets an eighth, which is one share. Thus, seven shares are left for the closest relatives. However, it is not divided equally among them because the total number of people is three and the male gets twice the share of the female. So when consideration is made between the shares and the numbers

of people, a conflict is present. Thus, the total number of inheritors, which is three, is placed over the shares of inheritance and multiplied by them. The result is twenty-four, by which the inheritance shares are made correct. Thus, this process is done as has preceded. (See the chart)

3		
Matter of shares: $8 \times 3 = 24$ Whole number of people becomes three		
Wife	1	3
Son	7	14
Daughter		7

This is if *Al-Inkisar* applies to one group of inheritors. However, if it is applied to more than one group of inheritors, then what each group and its shares that are broken down by common denominations or conflicting shares are taken into consideration. Then, whatever results from the consideration is placed behind the group. Then these numbers that are placed behind each group is referred to and consideration is made between it and the four (previously mentioned) considerations. In case the case of *At-Tamathul*, one of them is sufficient. In *At-Tadakhul*, the largest of them suffices, because the smaller share is included under the larger share. In *At-Tawafuq*, it is sufficient to use the resulting figure from multiplying the common fraction (of one of the numbers) by the total agreeable number (of the other number). In *At-Takhaluf*, it is sufficient to multiply the conflicting number by the other complete number. Then the resulting figure is placed above the inheritance shares. Then it (the resulting figure) is multiplied by the inheritance shares and the result of that is placed in the other column. This is how it is done, as was explained previously.

An example of *Al-Inkisar* with two groups:

In the case of two wives and two brothers, the matter of shares is four. The two wives get one share and it is broken up between them. The remaining three shares are for the two brothers due to *At-Ta'sib* (being the closest surviving male relatives). The three shares are also broken up



between them. So the share of the wives and their number is considered, and there is a conflict between them. Thus, their total number, which is two, is placed behind them. Then the two brothers and their share is considered, and there is a conflict between them also. This is because three shares conflict with two inheritors. Therefore, the number of brothers is placed behind them as well (i.e. two). Then the two numbers of spouses and brothers is considered, and there is *At-Tamathil* (i.e. they are the same, two and two) between them, so one of the two numbers suffices, and it is placed above the shares of inheritance. Then, that number (two) is multiplied by the number of shares, and the resulting figure is placed in the other column. This is how it is done, just as was previously explained. This is an example of it and it is an example in which *At-Tamathul* is used for a number of inheritors. (See the chart)

2		
Matter of shares 4: $4 \times 2 = 8$ No. of same people = 2		
Wife	1	1
Wife		1
Brother	3	3
Brother		3

An example of when *At-Tadakhul* and *At-Takhaluf* are used for four wives, three daughters and two sisters is like this: (See the chart)

You will notice that *Al-Inkisar* (breaking up) is done for three groups and each group has a conflict in its number of shares. Thus, the number of people in each group is placed behind the group. Then the statistics are reviewed, meaning the number of people in each group. And it is found

12		
Matter of shares 24: $24 \times 12 = 288$		
Wife	3	9
Wife		9
Wife		9
Wife		9
Daughter	16	64
Daughter		64
Daughter		64
Sister	5	30
Sister		30

that *At-Tadakhul* applies to the group of four and two, so it suffices to use the larger number, which is four. Then four and three are considered, and there is conflict between them, so the total of one is multiplied by the total of the other, i.e.  $3 \times 4$  or vice versa,  $4 \times 3$ . The resulting figure is twelve, so it is placed above the number of shares. Then it is multiplied by the number of shares to get the resulting figure two hundred and eighty-eight (i.e.  $12 \times 24 = 288$ ). This number is then placed in the other column, and the rest is done just as was mentioned previously.

### Dividing up the Inheritance

Dividing up the inheritance is the main objective of learning the laws of inheritance, and it is the intended result of it.

Dividing up the inheritance has various methods, however we will limit ourselves to just two of them: The first method is if the inheritance is an item and the second is if the inheritance is in the form of money. The first method is known as *At-Taqrīt*, and it is an expression concerning dividing the inheritance up into twenty-four parts, and each part is called a *Qirat*. The way it is done is that you place the number twenty-four in a group after the correcting group. Then you consider the *Qararīt* and the number by which the shares of inheritance were corrected. If they are the same then the matter is simple. You merely carry that which every inheritor has and place it in front of him (his row) under the column of the *Qararīt*. This is, for example, in the case of a wife, a mother and a son. It is like this: (See the chart)

	Correcting No.	Correct No.
	24	24
Wife	3	3
Mother	4	4
Son	17	17

If the two numbers are not the same, but they are agreeable in a ratio of proportion (i.e. they have a common denominator), then you take the agreeable ratio (*Wafq*) of the inheritance and place it in another column after the

group of the *Qararit*. Then you multiply that which every inheritor has by the agreeable ratio (*Wafq*) of the *Qararit* that has been placed above the column of the inheritance. Then you divide the resulting figure by the agreeable ratio (*Wafq*) of the inheritance that has been placed in the column after the column of the *Qararit*. The resulting figure of this division is placed under the column of the *Qararit* if it is a correct number. If the number is a correct number along with a remainder, the correct number from it is placed under the column of the *Qararit* and the remainder is placed under the last group (column) that represents the common multiple (*Wafq*) of the inheritance shares. Thus, the remainder becomes a part of what is above it. In a trial application, the correct numbers are gathered first, then the remaining numbers are gathered. So the remaining numbers become a correct number that you add to the correct numbers. If the resulting figure of combining these numbers is twenty-four, which is the same amount as the number of the *Qararit*, then the procedure was performed properly; and if not, it was not done properly.

	3	2		
	12	36	24	3
Husband	3	9	6	0
Mother	2	6	4	0
Son	7	14	9	1
Daughter		7	4	2

An example of this is like the deceased person (woman) who leaves behind a husband, a mother, a son and a daughter, which is like this (see the chart): (*At-Tawafuq* is considered by half of a sixth, since half of a sixth of twenty-four is two, and half of a sixth of thirty-six is three.)

It should be noted here that the basis in the matter of shares of inheritance here is twelve and it is correct to perform the division by thirty-six shares, so that the shares may be broken down to include the son and the daughter. Thus, the procedure is performed exactly according to the preceding principle.

Another example is a person who dies leaving behind a wife, a mother and a sister, which is like this (see the chart):

2			
	12	24	1
Wife	3	6	-
Mother	4	8	-
Sister	5	10	-

It should be noted here that *At-Tawafuq* is achieved with half of a sixth. Therefore, half of a sixth of the *Qararit*, which is two, is placed above the inheritance column, and the agreeable ratio of the inheritance is placed in the last column, which is one, because it is half of a sixth of twelve. And the procedure is carried out just as has been mentioned. However, dividing by one gives the same number without any increase or decrease, so it has no effect. Thus, the result is placed in front of the person's row just as was done before.

If dividing the shares involves *At-Takhaluf*, then you take the total of the *Qararit*, which is twenty-four, and you place it above the inheritance column. Then you take the total of the inheritance column and place it in the group (column) behind the group (column) of the *Qararit*. Then you multiply what each inheritor has by what is above the inheritance column, which is twenty-four. Then you divide the resulting figure of this multiplication by the total number of shares. The resulting figure of this division is placed in the final group (column). If the number is exactly correct, you place it in front of its inheritor, under the column of the *Qararit*. If the correct number also has an odd number with it, the correct number is placed under the column of *Qararit* and the odd number is placed under the final column. The odd number is then considered a portion of that number. If you added up these odd numbers, they should be equal to the correct number! Then if you add this number to all the correct numbers, the resulting figure should be the total number of the *Qararit*, which is twenty-four.

An example of this is the case of a man who dies leaving a wife, a mother and two half sisters by the same father. It is

noticed here that (see the chart):

Between the inheritance and the *Qararit* there is a discrepancy (*Takhaluf*), as thirteen and twenty-four are not equally

24				
	12	13	24	13
Wife	3	3	5	7
Mother	2	2	3	9
Half sister	4	4	7	5
Half sister	4	4	7	5

divisible by any ratio. Therefore, we place the total of the *Qararit* (i.e. twenty-four) above the inheritance (column) and the total of the inheritance (i.e. thirteen) in the column behind the column of the *Qararit*.

The remaining numbers that are under the last column, after bringing them together they make a correct number, which is two. Then we place this two beneath the column of the *Qararit* and when they are added to the total of its columns, the number of the *Qararit* becomes twenty-four. In this way we know that the procedure was performed correctly.

The second method is when the inheritance that is left is specific (i.e. money), such as dirhams or dinars. In such a case the procedure does not differ from the first method of *At-Taqrīt*, except that you place the inheritance that is left meaning the total number of dirhams or dinars in the column that you would have placed the number of the *Qararit* (i.e. twenty-four). Then the procedure is performed the same as the previous method of *At-Taqrīt*. Here is an example for you:

A woman dies leaving behind a husband and a son, and she leaves behind an amount of wealth that is forty riyals. Hence, the procedure is carried out like this (see the chart):

10			
	4	40	1
Husband	1	10	
Son	3	30	

It is noted that we made a consideration between the

inheritance shares and the inheritance that has been left and we found that there was a common factor (*At-Tawafuq*) between them with the fourth. So we took the agreeable ratio of the left inheritance and we placed it in the last column so that we could divide by it. Then we took the agreeable ratio of the inheritance that was left, which was ten, so that we could multiply by it, and we placed it above the inheritance shares column. Then we multiplied what the husband has (i.e. his share), which was one, by what was above the inheritance column, which was ten, and the result was ten (i.e.  $1 \times 10 = 10$ ). Then we divided by the agreeable ratio of the inheritance, which was one, and came up with the same number, which was ten (i.e.  $10 \div 1 = 10$ ). So we put it (ten) in front of its inheritor. Likewise, we did the same with the inheritance of the son. Thus, the husband got ten shares of forty, which is a fourth, and the thirty shares went to the son, which is three fourths of forty.

Another example is the case of a husband, a mother and a sister, and the inheritance that was left is sixty dirhams.

It is noted that *At-Tawafuq* (a common multiple) is present with the sixth share that is present. (See the chart)

	10		
	6	60	1
Husband	3	30	-
Mother	2	20	-
Sister	1	10	-

Another example in which there is a discrepancy (*At-Takhaluf*) between the inheritance shares and the left inheritance, is the case of a wife, a mother and a father. The amount of the inheritance that was left is two hundred and thirty-five dirhams. The procedure is like this: (See the chart)

	235		
	12	235	12
Wife	3	58	9
Mother	4	78	4
Father	5	97	11

It is noted here that there is no common ratio between the inheritance shares and the left inheritance. Likewise, it is noticed that the procedure never differs in this method from the method of *At-Taqrir*, except

that the amount of left inheritance is placed (in the second column) instead of the *Qararit*. Regarding the procedure, it is performed in exactly the same manner as the previous example. So the wife gets her fourth, which is three shares, which is multiplied by the left inheritance, which is two hundred and thirty-five, that is divided by the original inheritance shares (i.e. the last column), which is twelve. The resulting figure is then fifty-eight dirhams (i.e.  $3 \times 235 = 705$  &  $705 \div 12 = 58.75$ ). Then this number (58) is placed in front of her (in her row) under the column of left inheritance. The remainder remains, which is nine, and it is placed under the column of the original inheritance (i.e. the last column) and its ratio is expressed as  $9/12$ th, which is equal to  $3/4$  of one whole. For the mother, her share (i.e. 4) is multiplied by what is above the inheritance column (235) and the resulting figure is divided by twelve, which equals seventy-eight (i.e.  $4 \times 235 = 940$  &  $940 \div 12 = 78.33$ ). The remainder is four, which is from twelve (i.e.  $0.33 = 1/3$ rd &  $1/3$ rd of 12 is 4). For the father, his share (i.e. 5) is multiplied (by 235) and divided (by 12), with the resulting figure being 97 (i.e.  $5 \times 235 = 1175$  &  $1175 \div 12 = 97.9166$ ). The remainder is 11, which is from twelve (i.e.  $0.9166 = 11/12$ th &  $11/12$ th of 12 is 11). So the remainders are added together equaling a total of 24, which means two correct (i.e.  $24 \div 2 = 12$ ). Thus, the number two is placed beneath the lowest row of numbers under the chart (beneath the column of left inheritance). Then it is added to them to giving a total that is equal to the total amount of left inheritance (i.e.  $58 + 78 + 97 + 2 = 235$ ). Therefore, we know that the procedure was performed properly, and that is what is desired.

### ***Al-Munasakhah***

*Al-Munasakhah* means the procedure that, in case an inheritor dies before the division of the inheritance, allows one to know what the inheritors of the second deceased

have a right to from the inheritors of the first deceased before dividing up the left inheritance. The way of doing this is that you rectify the inheritance of the first deceased. Then you place the letter *Ta'* (ﺕ) as a sign of the death of the inheritor and it is placed in front of him (i.e. his row). Then whoever inherits from the inheritors of the first deceased, you place them with their new titles in the new inheritance. So whoever was a wife in the regards to the first inheritance, becomes a mother in the second inheritance, for example. You place them opposite their shares in the first inheritance. If a new inheritor or more is present, you place him in the chart beneath the first chart. Then you rectify the matter of their inheritance and consider what is between the rectified matter of inheritance and the shares of the deceased. If the shares are divided among the second inheritance, then the two matters of inheritance are rectified by what rectified the first inheritance. An example of this is the case of a wife who dies leaving a husband, a mother, a son and a daughter. Then the husband dies leaving behind his son and his daughter, who have just been mentioned. Hence, the first matter of inheritance is from twelve shares and it is rectified from thirty-six shares, due to the breaking up of the share of the son and the daughter between them. The second matter of inheritance is from three shares. The share of the deceased husband is nine, so it is divided up among the second inheritance shares, which are three. Therefore, both matters of inheritance are rectified by thirty-six shares. Hence, you make a final column that is called the column of *Al-Munasakhah*. Then you move the number, which has been corrected from the first inheritance column to the column of *Al-Munasakhah*, which is thirty-six. Then you move the shares to this section and you place them under it in a column. Hence, for the person who does not get any share of the second inheritance, you place his share from the first inheritance just as it was under the column of *Al-Munasakhah* in front of him (i.e. his row). Whoever gets something from the second share of



inheritance, you multiply his share by what is above the column of inheritance and you add the resulting number to his original share of inheritance from the first inheritance, if he had anything.

Then you place that number in front of him (i.e. his row) under the column of *Al-Munasakhah*, like so (see the chart):

	3			2	
	12	36		3	36
Husband	3	9	Ta'		
Mother	2	6			6
Son	7	14	Son	2	20
Daughter		7	Daughter	1	10

If the shares of the deceased are not divided wholly over the second inheritance, then you must look at them in consideration of *Al-Muwafiqah* and *Al-Mukhalifah*. So if the shares agree in the least ratio, you take the agreeable ratio of the shares and place it above the column of inheritance. Then you take the agreeable ratio of the inheritance and you place it above the first inheritance. Then you multiply the agreeable ratio by the inheritance and you place the resulting answer in the last column, which is the column of *Al-Munasakhah*. Then you multiply that which the inheritor has (of shares) by that which is above the first inheritance column, which is the agreeable ratio. You place the resulting figure in front of him (i.e. his row) under the column of *Al-Munasakhah*. If he has anything in the second inheritance, you multiply it by that which is above the second inheritance column. Then add the resulting figure to the person's inherited wealth from the first inheritance and place all of it in front of him (i.e. his row), beneath the column of *Al-Munasakhah*, and this is his share.

An example is a husband who dies leaving a wife, a daughter and a sister. Then the daughter dies, leaving her mother, who was the wife in the first inheritance, a husband and a son. So the first matter of inheritance is in eight shares and the second is in twelve shares. Between the shares of the deceased daughter, which are four, and what corrects the second inheritance, which is twelve, is a

common ratio of a fourth ( $1/4$ th). So the agreeable ratio of the shares, which is one, is placed above the second inheritance column and the agreeable ratio of the second inheritance, which is three, is placed above the first inheritance column. Then the procedure is carried out just like what preceded and here is a picture of this (see the chart):

	3		1	
	8		12	24
Wife	1	Mother	2	5
Daughter	4	Ta'		-
Sister	3			9
		Husband	3	3
		Son	7	7

If the shares conflict with the second inheritance, you take all of the shares and place them above the second inheritance. Then you take the second inheritance and place it above the first inheritance. Then you multiply the first inheritance by the second inheritance (above it) and place the resulting figure in the column of *Al-Munasakhah*, after the column of the second inheritance. Then the procedure is carried out exactly like what preceded. An example of this is a man who dies leaving a wife, three sons and a daughter. Then the wife dies, leaving her three sons and her daughter. (See the chart)

	7		1	
	8		7	56
Wife	1	Ta'		
Son	2	Son	2	16
Son	2	Son	2	16
Son	2	Son	2	16
Daughter	1	Daughter	1	8

It is noted here:

That the deceased (wife) does not leave a new inheritor to

be placed in the chart beneath the first chart.

That the procedure is carried out in exactly the same manner as the was mentioned previously.

### ***Al-Khuntha Al-Mushkil:* The Hermaphrodite Problem**

*Al-Khuntha Al-Mushkil* means the child that is born and at the time of its birth it is not clear as to whether the child is a male or a female. In such a case it is waited until the child reaches puberty in order to see what the child's situation is (i.e. its sex). So if the inheritance is going to be divided, the method that is suggested by some of the people of knowledge is that such a child is given half the share of a male and half the share of a female.

The way this is done is that the child's inheritance is determined as if it is a male and again as if it is a female. This is if there is only one *Khuntha* (hermaphrodite). However, if there are two of them, the inheritance is calculated as four. After arranging the inheritance you look between the inheritance shares based upon the four methods of consideration until one number is attained. Then you multiply the result of the consideration by the number of conditions. The resulting figure is what rectifies the inheritance. You place this number in a column after the column of inheritance, and then you divide it by each of the inheritance shares and place the resulting figures above them (i.e. their columns). Then you multiply that which each inheritor has for each inheritance by that which is above its column. Then you add the resulting figures and the total is divided by the number of conditions. You then place the resulting figure of this division opposite the inheritor (i.e. in his row), under the large column. Then you add that which each inheritor has, and if its number is the same as the number of the column, the procedure was performed correctly. If the numbers are not equal, the procedure was not performed properly. An example of this

is the case of a man who dies leaving a son and a hermaphrodite. (See the chart)

	6	4	
	2	3	12
Son	1	2	7
Hermaphrodite	1	1	5

What is noticed in this matter:

We made two shares for him: the first in considering him a male and the second for considering him a female.

We looked between the two shares and we found discrepancy (*At-Takhaluf*) between them. So we multiplied the total of one of them by the total of the other (i.e.  $2 \times 3$ ) and got six. Then we multiplied six by the total number of conditions (i.e. one son and one hermaphrodite) which was two, and we got twelve. Thus, we made it the corrective column.

We divided the number of the corrective column, which was twelve, by each inheritance. The result of the first was six, which we placed above its column (i.e.  $12 \div 2 = 6$ ), and the result of the second was four, which we placed above its column (i.e.  $12 \div 3 = 4$ ).

We multiplied what each inheritor had in the two inheritances by what was above its column. So the hermaphrodite got ten (i.e.  $1 \times 6 = 6$ ,  $1 \times 4 = 4$ ,  $6 + 4 = 10$ ). Then we divided his ten over the number of conditions (i.e. 2) and got five. Then we placed it opposite the hermaphrodite (i.e. in his row), beneath the corrective column and that was his share. When we multiplied what the son had by what was above the columns we got fourteen (i.e.  $1 \times 6 = 6$ ,  $2 \times 4 = 8$ ,  $6 + 8 = 14$ ). Then we divided the fourteen by the number of conditions (i.e. 2) and got seven. Thus, we placed it opposite him (i.e. in his row), beneath the corrective column and that was his required share.

Another example is the case of a man who dies leaving two sons and a hermaphrodite. (See the chart)

	10	6	
	3	5	30
Son	1	2	11
Son	1	2	11
Hermaphrodite	1	1	8

It is noted that the procedure does not differ from the previous method. There is another method that some of the scholars use, and it is that the smaller of the two portions is given to each of the inheritors who will be affected by whether the hermaphrodite is considered a female or male. The remainder is withheld until the problematic situation of his sex becomes clear (i.e. is he male or female) or they come to an agreement concerning its division.

The way this is done is that the hermaphrodite is considered to be female regarding himself so that he will have the least that is certain (i.e. that he is sure to get either way). However, he is considered a male in regards to others, so that the others will likewise receive the least certain amount and the remainder is withheld. Thus, in the situation of a man who dies leaving a son and a hermaphrodite, you make two inheritances. In the first inheritance you consider the hermaphrodite a male, in which case the base of the shares is two. In the second inheritance the hermaphrodite is considered a female, in which case the base of the shares is three. Then both base shares are looked at and it is found that they have a discrepancy between them in ratio (i.e. *At-Takhaluf* between two and three). Then one of the two is multiplied by the other (i.e.  $2 \times 3$ ) and the result is six. So a corrective column is made and that which each of the two inheritors has is added together from the two inheritance columns. Then the total is placed opposite him (i.e. in each person's row) under the corrective column. Therefore, the share of the male is three and the share of the hermaphrodite is two. Thus, one share is left (i.e.  $2+3=5$ ,  $6-5=1$ ), which is withheld

until the problem of the hermaphrodite (i.e. his true sex) is made clear. If it becomes clear that he is a male, he is given the one (remaining) share. If it becomes clear that she is a female, the male (son) is given the one (remaining) share. If the problem of the hermaphrodite's sex remains unresolved, they come to an agreement between themselves concerning its division. An example of it is like this (see the chart):

	2	3	6
Son	1	2	3
Hermaphrodite	1	1	2

It is noted that one share remains, as the base of shares of the corrective column was six, and the number of shares beneath it was five. This one remaining share is what is withheld until the situation (of the hermaphrodite's sex) is clarified.

### **The Unborn Fetus**

In reference to the unborn fetus, if the inheritors wish, they may leave the inheritance without any division until the child is born and then carry out the division after that. They may also hasten the division if they wish, except that they must go along with the fundamental of the previously mentioned methodology of the hermaphrodite. This is that the inheritors who are affected by the presence of the child and its male gender or its female gender are given the least guaranteed amount that they would receive. The remainder is withheld until the child is born. An example of this is a man who dies leaving behind a pregnant wife. She (the wife) would inherit, with the presence of the unborn child and its being delivered alive, an eighth of the inheritance. In the absence of an unborn child or it being born dead she would inherit a fourth of the inheritance. Thus, she would be given an eighth because it is the least guaranteed amount. The rest is then withheld until the child is born. If the child is born alive, she does not get anything else. If the child is born dead, she would get the rest of a fourth (i.e. another

eighth in addition to the eighth that she already received), which is her designated share of the inheritance if there is no child.

### **The Missing Person**

In reference to the missing person, if one of the inheritors dies and the rest of the inheritors want to divide the inheritance before verifying the death of the missing person or the ruling of his death (i.e. the decision of the authorities to pronounce him dead), then they deal with the situation just like the inheritors with the unborn child. In other words, they are given the least guaranteed amount and the remainder of the inheritance is withheld until the missing person is officially pronounced dead or it is verified that he is alive. An example of this is the case of the deceased man who leaves behind two sons and one of them is missing. The son that is present is given half of the inheritance because it is guaranteed to him. The remainder of the inheritance is withheld until it is verified that the missing brother is either deceased or alive.

Another example is the case of a man who dies leaving a wife, a mother and two brothers, and one of the two brothers is missing. The wife is given her complete fourth, as she is not affected by the presence or absence of the missing brother. However, the mother is given a sixth because it is the guaranteed minimum that she is entitled to. The brother is given half of what remains, as this is the guaranteed minimum that he is entitled to. The remainder of the inheritance is withheld. If it become clear that the missing person is alive, the remainder of the inheritance is his and he takes all of it. If it is apparent that he is dead, the mother takes from the remaining inheritance enough to give her a complete third (i.e.  $\frac{1}{3} \times \frac{1}{4} = \frac{1}{12}$ , so she takes  $\frac{1}{12}$  of the inheritance from what remains to have a complete third). What remains after that is for the brother. Thus, the matter of inheritance is in twelve shares

and it is rectified by twenty-four. It looks like this (see the chart):

		1	2	
	12	24	12	24
Wife	3	6	3	6
Mother	2	4	4	4
Brother	7	7	5	7
Brother		7	-	-

It is noted here:

That we made two columns of inheritance the first of them considers the deceased person alive and it is corrected by twenty-four shares, by being broken down so that both the two brothers get a share. The second column considers one of the brothers dead and it is corrected by twelve shares.

That we looked between the two total inheritances and we found a common ratio between them (*At-Tawafuq*) in half of a sixth (i.e.  $1/12$ th). So we placed it as the agreeable ratio of the first inheritance, which is two, above the second inheritance, and the agreeable ratio of the second inheritance, which is one, above the first inheritance. So we multiplied the agreeable ratio by the total shares of inheritance and the resulting figure was twenty-four. Then we placed it in the last column and it was the corrective column.

That we based our procedure of giving the affected inheritors upon the consideration of the missing person being alive and thus they received the least guaranteed amount. So we multiplied what the wife had (6 shares) by what was above the first inheritance column and got six (i.e.  $6 \times 1 = 6$ ). Then we placed it opposite her (i.e. in her row) beneath the corrective column. Then we multiplied that which the mother has, which was four shares, by what we multiplied the wife's share by (1) and got four. We then placed the four opposite her (i.e. in her row) beneath the



corrective column. Then we multiplied that which the brother who was present had, which was seven shares, by what we multiplied the others by (1) and got seven. So we placed it opposite him (i.e. in his row) beneath the corrective column.

The shares in the column, when added together totaled seventeen from the twenty-four. Thus, seven is what remained. So it was withheld until a judgement is made as to whether the missing person is alive or dead. If he is pronounced alive, he takes the entire remaining seven shares and that is his portion of the inheritance. If he is pronounced dead the mother takes from what remains in order to complete a third, which would be eight (i.e. she took  $\frac{1}{6}$ th, which was four, so she takes another  $\frac{1}{6}$ th from what remains, as  $\frac{1}{6}$ th +  $\frac{1}{6}$ th =  $\frac{1}{3}$ rd). What remains after that is given to the brother, so his total share becomes ten and this is what is wanted.

### **Victims of Drowning and the Like**

In reference to those who have drowned and others who are similar to them, such as those who are killed by the collapsing of buildings and those who are burned to death in fires, the ruling according to the people of knowledge is that they do not inherit from each other. The inheritors of each one of them inherits from him except those who die of accidental deaths. An example of this is the case of two brothers who die in an accident and it is not known which of them died first. One of them leaves a wife, a daughter and a paternal uncle. The second brother leaves two daughters and the same uncle that was just mentioned. Verily the ruling in this situation is that only the inheritors of each of them inherits from them. So the inheritors of the first of them are his wife, who gets an eighth, his daughter, who gets half, and the rest is for the uncle. The inheritors of second brother are his two daughters, who get two thirds, and the rest is for the uncle, which is a third.

## **Inheritance for the Miscellaneous Relatives**

### **Who are the Miscellaneous Relatives?**

The miscellaneous relatives are those relatives who are not of the designated inheritors, nor of the relatives who are entitled to what is left. Examples are the maternal uncle, the maternal aunt, the paternal aunt, the daughter of the paternal uncle (cousin), the son of the sister (nephew), the daughter of the nephew (niece), the children of the daughters (grandchildren) and every other relative who is not entitled to inheritance. These people are not entitled to designated shares of the inheritance, nor are they relatives who are entitled to what is left over of inheritance.

### **The Ruling of Giving Them Inheritance**

There is a difference of opinion regarding giving the inheritance to miscellaneous relatives. Some of the Prophet's Companions, their students and the Imams said that they do not receive inheritance because Allāh the Almighty did not make them inheritors in His Book (the Qur'an). Indeed Allāh the Almighty designated the division of the left inheritance Himself, in His Mighty Book, and He limited it to the designated inheritors and those close relatives who have a right to what is left over. From the Imams who say that they do not get any inheritance are Malik and Ash-Shafi'i, may Allāh have mercy upon them. Some said that they may receive inheritance. From those who said this are Abu Hanifah and Ahmad, may Allāh have mercy upon them. They used as an evidence for their position the narrations that prove that the Prophet ﷺ gave inheritance to some of the miscellaneous relatives when none of the inheritors whom Allāh mentioned in His Book were present. From this is the Prophet's statement:

«الْخَالُ وَارِثٌ مَنْ لَا وَارِثَ لَهُ»

*«The maternal uncle is the inheritor of he who has no inheritor.»* (At-Tirmithi and Abu Dawud, however there is weakness

in its chain of narration.)

### **The Preferred View Between the Two Opinions**

The preferred view between the two opinions is the view that they may receive inheritance. This is why many of the *Fiqh* scholars of the Malikiyyah and Shafi'yyah legal schools changed their opinion to the view that they may be given from the inheritance. This is because the miscellaneous relatives are kin and it is obligatory to have good relations with the kin, and because the relationships of kinship and Islam tie them to the deceased. This is not the situation with the *Bayt Al-Mal* (State Treasury), as the deceased is only attached to it by Islam. Along with this, they (the scholars) have stipulated that for (the inheritance to go to) the *Bayt Al-Mal*, it (the *Bayt Al-Mal*) must be organized, the person who maintains it must be just, the person in charge of it must be trustworthy and it must be spent on those things which are of benefit to Muslims in general. These conditions may be lacking or absent, thus indicating that the inheritance should be given to miscellaneous instead of the *Bayt Al-Mal*.

### **How to Give the Inheritance to Miscellaneous Relatives**

They are given inheritance by placing them in the position of whoever is closest to them in relationship from the people who are entitled to designated shares of the inheritance or those who are entitled to what remains after the inheritance is divided. Thus, one of them will be given that which would be given to the recipient of inheritance who is nearest to him in kinship and he is placed in his position. So if a man dies and leaves a granddaughter by his daughter and a son of his sister (nephew), the inheritance is divided between them in half. The granddaughter by the daughter gets half because it is the inheritance of her mother and the son of the sister (nephew) gets half because it is the inheritance of his

mother. This is because if the man had died and left a daughter and a sister, the wealth of his inheritance would be divided in half between them, as the inheritance of the daughter would be half and the inheritance of the sister would be half. Let's say that the sister was a full sister and a daughter of his half brother by the same father was left with her. In this situation the daughter of the brother would not receive anything. This is because the closest in relationship to her is the half brother by the same father, who is blocked off by the sister from receiving inheritance. The inheritance would then remain between the granddaughter by the daughter and the son of the sister (nephew), each getting a half. (See the chart)

	2
Grand daughter	1
Nephew	1
Daughter of the half brother by the same father	—

#### Another Situation:

A woman dies leaving a daughter of a full sister (niece), a daughter of a half sister by the same father, a son of a half sister by the same mother and a daughter of a paternal uncle (cousin). The daughter of the full sister gets half, which would be the inheritance of her mother, whose place she is taking. The daughter of the half sister by the same father gets a sixth, completing two thirds of the inheritance (i.e.  $1/2 + 1/6 = 2/3$ ), which would be the inheritance of her mother, whose place she is taking. The son of the half sister by the same mother gets a sixth, which would be the inheritance of his mother. The remainder of the inheritance would go to the daughter of the paternal uncle, which would be his share as the closest surviving male relative, as he is the paternal uncle. (See the chart)

	6
Daughter of a full sister	3
Daughter of half sister by the same father	1
Daughter of half sister by the same mother	1
Daughter of paternal uncle	1

Hence, the matter of inheritance is in six shares due to the presence of a sixth in it. So half of it is three shares, which go to the daughter of the full sister. A sixth, which is one share, goes to the daughter of the half sister by the same father. This completes two thirds of the inheritance. A sixth, which is one share, goes to the son of the half sister by the same mother. Then the remainder of the inheritance is one sixth, which is one share, and it goes to the daughter of the paternal uncle.

#### Another Situation:

A man dies leaving a granddaughter by a daughter, a son of a full sister (nephew), a son of a half sister by the same mother and a daughter of a half brother by the same father. So the granddaughter by the daughter gets half, which would be the inheritance of her mother, whose place she is taking. The son of the full sister (nephew) gets half, which, would be the designated inheritance of his mother, whose place he is taking. The son of the half sister by the same mother would not receive anything, because his mother, whose place he is taking, would not be an inheritor, as she would be blocked off by the daughter. Likewise, the daughter of the half brother by the same father would not receive anything, because the closest person to him, whose place he is taking is the half brother by the same father, and he is blocked from inheritance by the full sister. (See the chart)

	2
Grand daughter	1
Son of full sister	1
Son of half sister by the same mother	-
Daughter of half brother by the same father	-

So, in this situation the matter of inheritance is in two shares due to the presence of a half in it. Half of the inheritance is one share, which goes to the granddaughter by the daughter, because it is the inheritance of her mother. The son of the full sister (nephew) gets half, which

is one share, as it is the inheritance of his mother, who is the full sister of the deceased. The son of the half sister by the same mother gets nothing, because his mother, whose place he is taking, is blocked from inheriting by the daughter. The daughter of the half brother by the same father would not receive anything, because his father, who is his closest relation to the deceased, and whose place he is taking, is blocked from inheriting by the full sister, as was mentioned previously.

#### Another Situation:

A man dies leaving behind a maternal aunt and a paternal aunt. Hence, the maternal aunt gets a third, because it is the inheritance of the mother, who is her closest relation to the deceased, and whose place she is taking. The paternal aunt gets the remaining two thirds, because it is the inheritance of her closest relation to the deceased, who is the father, and the father is the closest male relative, who gets what remains after the inheritance is divided. (See the chart)

	3
Maternal aunt	1
Paternal aunt	2

Thus, the matter of inheritance is in three shares due to the presence of two thirds in it. One third of it, which is one share, goes to the maternal aunt, because she is taking the place of the mother, who is her closest relation to the deceased. Two thirds of the inheritance, which is two shares, goes to the paternal aunt, because she is taking the place of the father, who is her closest relation to the deceased, and he is the closest male relative, who gets whatever remains of the inheritance shares.

#### Important Notes:

The miscellaneous relatives are not given inheritance when someone who gets a designated share or who is entitled to the remaining shares exists. This is because whatever remains of the inheritance shares is given to the people who are designated recipients of inheritance, until nothing is

left. The only exception is if the inheritor is a spouse of the deceased, in which case the miscellaneous relatives are given inheritance.

So if a man dies leaving a half brother by the same mother or same father and a maternal aunt, the half brother would get all of the inheritance. The maternal aunt would not get anything because she is from the miscellaneous relatives and nothing would be left to give her as inheritance. Similarly, if a man died leaving a mother and a maternal aunt, all the wealth would go to the mother as inheritance and whatever is left. The maternal aunt would not get anything. However, if a man died leaving a wife and a daughter of a brother (niece), the wife would get a fourth as her designated inheritance and the rest would go to the daughter of the brother (niece). This is because she (the niece) takes the place of her father and he is the closest male relative, who gets what is left of the inheritance.

The miscellaneous relatives, when put together, are viewed as if they are the original inheritors from those who are entitled to inheritance and those who inherit what is left due to closeness of kinship. Those of higher status block off those of lower status and the full brother blocks off the father.

If there is a situation where people are equal in their level and closeness of relationship, then they are placed together in the inheritance and neither of them is given preference over the other. Also, the male gets twice the share of the female.

An example of this is a man who dies leaving a granddaughter by a daughter, a great-granddaughter by a daughter, or a great-grandson by a daughter. In this case, all the wealth is for the granddaughter by the daughter alone and the great-granddaughter by the daughter and the great-grandson by the daughter would not receive anything. This is because the granddaughter by the daughter is higher in family degree, and the relative that is higher in

degree blocks off those that are lower from inheritance.

Another example is the case of a man who dies leaving a daughter of a full brother (niece) and a daughter of a half brother by the same father. In this case, all the wealth goes to the daughter of the full brother (niece) and the daughter of the half brother by the same father does not get anything. This is because the full brother blocks the half brother by the same father from inheriting. So whoever takes his place in relationship also takes his place in consideration of inheritance or lack of receiving inheritance. Whoever is closest to the inheritor inherits and whoever is closer to someone who does not inherit, then that person does not inherit. This is like a man who dies leaving a daughter of a daughter of his son (great-granddaughter) and a son of a son of his daughter (great-grandson). In this case the wealth goes to the daughter of the daughter of his son (great-granddaughter) and the son of the son of his daughter (great-grandson) does not get anything. This is because, even though they are on the same level of family lineage, as each of them are connected to the deceased by two generations, the daughter of the daughter of his son (great-granddaughter) is closer to an inheritor, so she inherits. In reference to the son of the son of his daughter, he is closer in relationship to someone who does not inherit, thus he does not inherit. This is because the son of the son (grandson) inherits and the son of the daughter (also a grandson) is not an inheritor.



## The Oath

### Its Definition

The oath is swearing by the Names of Allāh the Almighty or His Attributes. For example, saying: "By Allāh, I will certainly do such and such." Or saying, "I swear by the One Whom my soul is in His Hand." Or "I swear by the Turner of the hearts."

### What is Permissible and Not Permissible of It?

It is permissible to swear by the Names of Allāh the Almighty, as the Prophet ﷺ used to swear by Allāh Whom there is no true God other than Him. He would swear by saying:

«وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ»

*«By He Whom the soul of Muhammad is in His Hand.»*

Also, Jibril (upon him be peace) swore by the Might of Allāh the Almighty, when he said, "By Your Might, no one will hear of it except that he will enter it (i.e. Paradise)."<sup>[1]</sup>

It is not permissible to swear by other than the Names of Allāh the Almighty and His Attributes, regardless if the thing that is being sworn by is something that is honored Islamically, such as the Noble Ka'bah, may Allāh protect it, and the Prophet ﷺ, or it is something not honored

[1] This is from a *Hadith* which states :

«حُفَّتِ الْجَنَّةُ بِالْمَكَارِهِ وَحُفَّتِ النَّارُ بِالشَّهَوَاتِ . . .»

*«The Paradise is surrounded by things that are disliked and the Hell-fire is surrounded by the lusts.»* (It was reported by At-Tirmidhi and he graded it *Sahih*)

Islamically. This is due to the Prophet's statement:

«مَنْ كَانَ حَالِفًا فَلْيَحْلِفْ بِاللَّهِ أَوْ لِيَصْمُتْ»

«Whoever swears, then let him swear by Allāh or be silent.»

(Al-Bukhari and Muslim)

And his statement:

«لَا تَحْلِفُوا إِلَّا بِاللَّهِ، وَلَا تَحْلِفُوا إِلَّا وَأَنْتُمْ صَادِقُونَ»

«Do not swear, except by Allāh, and do not swear unless you are telling the truth.» (Abu Dawud and An-Nasa'i)

And his statement:

«مَنْ حَلَفَ بِغَيْرِ اللَّهِ فَقَدْ أَشْرَكَ»

«Whoever swears by other than Allāh, then he has committed Shirk.» (Ahmad)

And his statement:

«مَنْ حَلَفَ بِغَيْرِ اللَّهِ فَقَدْ كَفَرَ»

«Whoever swears by other than Allāh, then he has committed disbelief.» (Abu Dawud and Al-Hakim)

## Its Categories:

The oath has three categories and they are as follows:

### 1. Al-Ghumus:

It is that a person intentionally swears to a lie. For example, if he says, "By Allāh, verily I bought such and such for fifty." However, he did not buy it for fifty. Or he says, "By Allāh, I did such and such." However, he did not do it. This type of swearing is called *Al-Ghumus*, because it buries in sin the person who does it. This is the swearing that is meant by the Messenger's statement:

«مَنْ حَلَفَ عَلَى يَمِينٍ وَهُوَ فِيهَا فَاجِرٌ لِيَقْتَطِعَ بَيْنَا مَالَ أَمْرِيءٍ مُسْلِمٍ لَقِيَ اللَّهَ وَهُوَ»

عَلَيْهِ غَضَبَانُ

«Whoever swears an oath, and he is sinful in it in order to cut off the wealth of a Muslim man, he will meet Allāh while Allāh is angry with him.» (Al-Bukhari and Muslim)

### The Ruling of the *Ghumus* Oath

The ruling concerning this type of oath is that there is no expiation that makes up for it. The only thing obligatory concerning it is repentance and seeking forgiveness.<sup>[1]</sup> This is because it is such a tremendous sin, especially if it is connected with taking the right of a Muslim person by falsehood.

### 2. *Laghw-ul-Yamin:*

This is the swearing that runs upon the tongue of the Muslim unintentionally. Like the person who often says during his speech, "No, by Allāh," and "Of course, by Allāh." This is due to the statement of 'A'ishah (may Allāh be pleased with her), "*Al-Laghw* in oaths is the saying of the man in his house, 'No, by Allāh.'" (Al-Bukhari) From this type of oath is that the Muslim swears to something that he thinks is such, but then it becomes clear that it is not as he thought. The ruling of this oath is that there is no sin in it and there is no obligation of expiation due upon the one who says it. This is due to Allāh's statement:

﴿لَا يُؤَاخِذُكُمُ اللَّهُ بِالْفَعْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ﴾

«Allāh will not punish you for what is unintentional in your oaths, but He will punish you for your deliberate oaths.» (5:89)

### 3. *Al-Yamin-ul-Mun'aqidah:*

This is the oath that is intended to be fulfilled concerning some future matter. For example, if the Muslim says, "By Allāh, I will certainly do such and such." Or, "By Allāh, I

[1] However, Ash-Shafi'i disagreed with this. He held the view that it is obligatory to make expiation for the *Ghumus* oath.

will not do such and such.” This is the oath regarding which, the person who breaks it is held accountable. This is due to Allāh the Almighty’s statement:

﴿وَلَكِنْ يُلَازِمُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ﴾

«But He will punish you for your deliberate oaths.» (5:89)

### Its Ruling

Whoever breaks this type of oath is considered sinful and it is obligatory upon him to make expiation for it. If he carries out its expiation, the sin is removed from him.

### What Cancels the Necessity of Expiation?

Expiation and sin are canceled from one who swears to an oath by two matters:

1. That the person does that which is sworn not to be done, or he does not do that which is sworn to be done, or he does what he swore not to do, or he does not do what he swore he would do - unless it is because of forgetfulness or a mistake or under compulsion. This is due to the Prophet’s statement:

«رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اسْتُكْرِهُوا عَلَيْهِ»

«My Ummah (nation of followers) is not held responsible for mistakes, forgetfulness and what they are forced to do unwillingly.» (See earlier.)

2. That the person makes an exception when he is swearing by saying, “If Allāh wills,” or “Except if Allāh wills.” This is if the statement of exception takes place during the same sitting in which he swore the oath. This is due to the Prophet’s statement:

«مَنْ حَلَفَ فَقَالَ: إِنْ شَاءَ اللَّهُ لَمْ يَحْتَفِ»

«Whoever swears an oath and then says, ‘If Allāh wills,’ then

*he has not broken his oath.*<sup>[11]</sup>

If the person does not break his oath (by saying 'If Allāh will'), then there is no sin on him and no expiation required.

## Breaking the Oath in Matters of Good

It is recommended for the Muslim, who swears to leave off a matter from the matters of good, to do what he swore to leave off and make an expiation for his oath. This is due to the statement of Allāh the Almighty:

﴿وَلَا تَجْعَلُوا اللَّهَ عُرْضَةً لِأَيْمَانِكُمْ﴾

﴿And make not Allāh's (Name) an excuse in your oaths.﴾  
(2:224)

And the statement of the Messenger ﷺ:

«إِذَا حَلَفْتَ عَلَى يَمِينٍ فَرَأَيْتَ غَيْرَهَا خَيْرًا مِنْهَا فَأَبْتِ الَّذِي هُوَ خَيْرٌ وَكُفِّرْ عَنْ يَمِينِكَ»

«If you swore to an oath and you see something else as better than it, then do that which is better and make an expiation for your oath.» (Muslim)

## The Obligation of Fulfilling Another's Oath

If the Muslim makes an oath to his brother that he (his brother) must do something, it is obligatory upon him to

[11] The *Sunan* compilers, except for Abu Dawud. There is a weakness in this narration and the majority act according to it due to it a supporting witness from a narration of Abu Dawud on the authority of Ibn 'Umar, who attributed to the Prophet ﷺ that he said:

«مَنْ حَلَفَ عَلَى يَمِينٍ فَقَالَ: إِنْ شَاءَ اللَّهُ فَقَدْ اسْتَنْتَى»

«Whoever swears to an oath and says, 'If Allāh will,' then he has made an exception.»

fulfill his oath and not let him break his oath, if he is able to do what his brother has sworn an oath upon him concerning. This is due to the Prophet's statement to the woman who was given a gift of dates. She ate some of them and left some of them. So the woman who had given her the gift of dates swore an oath to her that she must eat the rest of the dates, but she refused. Then the Prophet ﷺ said to her:

«أَبْرِيهَا، فَإِنَّ الْإِنَّمَّ عَلَى الْمُحْنِثِ»

*«Fulfill her oath. For verily the sin is upon the person who makes someone break their oath.»* (Ahmad and its narrators are narrators of the *Sahih*.)

## **The Oath is based upon the Intention of the One Who swore to It<sup>[1]</sup>**

The consideration in swearing and not swearing is based

<sup>[1]</sup> This is regarding things other than legal claims. Concerning legal claims, then consideration is based upon the intention of the person (defendant) who is requested to take an oath. This is due to the Prophet's statement in a *Hadith* recorded by Muslim:

«الْيَمِينُ عَلَى نِيَّةِ الْمُسْتَخْلِفِ»

*«The oath is based upon the intention of the one who is requested to take an oath.»*

He ﷺ also said:

«يَمِينُكَ عَلَى مَا يُصَدِّقُكَ بِهِ صَاحِبُكَ»

*«Your oath is based upon what will make your companion believe you.»*

So if a person claims that another person has his animal without any proof, then the person who is accused takes an oath by saying: "By Allāh, I do not have it," or "It is not his (the other person's) animal." But in his saying this, he is intending that what he has (of the other person's) is something else, then his intention does not benefit him, and he is considered as breaking his oath and a liar.

upon the intention of the one who is swearing the oath, as actions are based upon intentions and every person will get what he intended. So whoever swears that he will not sleep on the ground and he means the bed, then his oath is considered based upon his intent. Therefore, he has not broken his oath as long as he does not sleep on the bed. Whoever swears that he will not wear this linen material as a *Thawb* (long shirt), but he wears it as pants, he has not broken his oath if he only intended it in the form of a *Thawb*. If he meant linen in general and not specifically as a *Thawb*, then he has broken his oath.

### Expiation of Oath

The expiation for an oath is four things:

1. Feeding ten poor people by giving them each a *Mudd* of wheat or gathering them all for lunch or dinner so that they may eat until they are satisfied or giving each one of them a loaf of bread with some condiment to go with it.
2. Clothing them (ten poor people) by giving them each a garment that they can wear during prayer (*As-Salah*). If one gives a garment to a (poor) female, he must give her a long shirt and a head-scarf, because it is the minimum requirement that suffices her in prayer.
3. Freeing a believing (i.e. Muslim) slave.
4. Fasting three days in succession if one is able, and if not, fasting them separately (i.e. not in succession).

Fasting is not done as the expiation unless one is unable to feed the poor people, or give them clothes, or free a slave. This is due to Allāh the Almighty's statement:

﴿فَكَفَّرْنَاهُ بِإِطْعَامِ عَشْرَةِ مَسْكِينٍ مِنْ أَوْسَطِ مَا تُطْعَمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ﴾

﴿For its expiation (a deliberate oath) feed ten Masakin (poor persons), on a scale of the average of that with which you feed

*your own families, or clothe them or manumit a slave. But whosoever cannot afford (that), then he should fast for three days. That is the expiation for the oaths when you have sworn.* ﴿5:89﴾

## The Vow

### Its Definition

The vow is that the Muslim obligates himself to an act of obedience to Allāh, that he otherwise would not be obligated to without vowing. This is, for example, like a person saying, "I owe Allāh a day of fasting," or "two *Rak'ahs* of prayer."

### Its Ruling

The ruling of vowing is as follows:

The unrestricted vow, by which only the Face of Allāh is intended, like fasting or prayer or charity, is permissible and it is obligatory to fulfill it.

The restrictive vow is disliked. This is, for example, like a person saying, "If Allāh cures my illness, I will fast such and such or give such and such in charity." This is due to the statement of Ibn 'Umar, may Allāh be pleased with him, "The Messenger of Allāh ﷺ forbade making vows and said:

«إِنَّهُ لَا يَرُدُّ شَيْئًا، وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنْ مَالِ الْبَخِيلِ»

*«Verily it does not repel anything, and it only brings out some of the wealth of the stingy person (i.e. it makes him give charity).»* (Al-Bukhari and Muslim)

Vowing is forbidden when it is for other than the Face of Allāh the Almighty. For example, making vows for the graves of the righteous people or the souls of the (deceased) pious people. Like if a person says, "Oh my master, so-and-so, if Allāh cures my illness I will sacrifice such and such (animal) over your grave or I will give such and such in charity to you." This is a form of directing worship to other than Allāh, the Almighty,



which is *Shirk* (associating partners with Allāh) that Allāh the Almighty has forbidden in His saying:

﴿وَاعْبُدُوا اللَّهَ وَلَا تُشْرِكُوا بِهِ شَيْئًا﴾

﴿And worship Allāh and join none with Him.﴾ (4:36)

### Its Types

Vowing has various types, which are as follows:

1. The unrestricted vow, which is that which outwardly expresses some information. For example, the Muslim's saying, "I owe Allāh a fast of three days or feeding ten poor people." He intends by this to draw nearer to Allāh the Almighty.

The ruling regarding this type of vow is that it is obligatory to fulfill it. This is due to Allāh the Almighty's statement:

﴿وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ﴾

﴿And fulfill the covenant of Allāh when you have covenanted.﴾  
(16:91)

And His statement:

﴿وَلْيُوفُوا نُذُورَهُمْ﴾

﴿And they perform their vows.﴾ (22:29)

2. The unrestricted vow that is not specific. This is like the Muslim's saying, "I owe Allāh a vow." Yet, he does not mention the vow (specifically). The ruling concerning this type of vow is that it is obligatory upon him to fulfill it by making an expiation for an oath. This is due to the Prophet's statement:

«كَفَّارَةُ النَّذْرِ إِذَا لَمْ يُسَمَّ كَفَّارَةُ يَمِينٍ»

«The expiation for the vow if the person does not name it (specifically) is the expiation of an oath.»<sup>[1]</sup> (Muslim)

[1] The wording of Muslim actually states, "The expiation of the vow is the expiation of the oath." This is concerning the unrestricted vow.

It has been said that it is considered the slightest thing that can be called a vow, such as praying two *Rak'ahs* or fasting a day.

3. The vow that is restricted to an action of the Creator (Allāh) the Mighty and Majestic. It is a statement that is outwardly expressed to bring out a condition, such as a Muslim's saying, "If Allāh cures my illness or returns that which is absent from me (i.e. what I lost), I will feed such and such number of poor people or I will fast such and such number of days."

The ruling concerning this type of vow is that it is obligatory to fulfill, even though making such vow is disliked (*Makruh*). So when Allāh fulfills his need, it is obligatory upon him to perform the act of worship that he named. This is based upon the Prophet's statement:

«مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِيعْهُ»

«Whoever vows to obey Allāh, then he should obey Him.» (Al-Bukhari)

However, if Allāh does not fulfill his need, he is not required to fulfill the vow.

4. The vow that is restricted to an action of the creation, and it is the vow of relentlessness (usually said forcefully in anger). This is like a person's statement, "I will fast a month if you do such and such or if such and such happens," or "I will give such and such of my wealth (in charity) if you do such and such."

The ruling concerning this type of vow is that the person is given the choice of fulfilling the vow or expiating an oath, as he has broken his oath regarding what he has attached to

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But the part of the sentence which states, "if the person does not name it (specifically)," since it is not present in some of the narrations, it is considered an addition to the *Hadith* by one of the narrators. However, its meaning is correct, as the unrestricted vow is the vow in which the one who says it does not name anything.

the vow. This is due to the Prophet's statement:

«لَا نَذَرَ فِي غَضَبٍ، وَكَفَّارَتُهُ كَفَّارَةُ بَيْعٍ»

*«There is to be no vowing in anger, and its expiation is the expiation of an oath.»* (Sa'īd bin Mansur recorded it in his *Sunan*)

This is because the vow of relentlessness is usually only said in anger and its intent is to prevent the person being addressed from doing something or not doing something.

5. The vow of disobedience. This is when someone vows to do something forbidden or not do something that is obligatory. For example, if a person vows to beat up a believer or not pray (*As-Salah*).

The ruling concerning this type of vow is that it is forbidden to fulfill it. This is due to the Prophet's statement:

«مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِيعْهُ، وَمَنْ نَذَرَ أَنْ يَعْصِيَهُ فَلَا يَعْصِهِ»

*«Whoever vows to obey Allāh, then he should obey Him, and whoever vows to disobey Allāh, he should not disobey Him.»*

(Ahmad, At-Tirmithi, Ibn Majah, Abu Dawud and An-Nasa'i)

However, some of the people of knowledge held the view that the person who makes such a vow must make an expiation of an oath. This is due to the Prophet's statement:

«لَا نَذَرَ فِي مَعْصِيَةٍ، وَكَفَّارَتُهُ كَفَّارَةُ بَيْعٍ»

*«There is no vowing in disobedience (to Allāh) and its expiation is the expiation of an oath.»<sup>[1]</sup>*

6. The vow regarding that which the Muslim does not possess or he is not able to do. This is, for example, if a person vows to free the slave of so-and-so or give a huge amount of gold in charity.

The ruling concerning this type of vow is that it requires

[1] Abu Dawud, with the wording, "nor regarding that which the son of Adam does not possess (i.e. has no control over)." There is nothing wrong with its chain of narration.

expiation. This is due to the *Hadith*:

«لَا تَذَرُ فِيمَا لَا يَمْلِكُ»

«There is no vowing regarding that which one does not possess.»<sup>[1]</sup>

7. The vow forbidding what Allāh has allowed. This is, for example, if a person vows to make a type of food or drink unlawful (to himself) that is permissible.

The ruling concerning this type of vow is that the person cannot make anything unlawful that Allāh has made lawful, other than his wife. So whoever vows to make her (his wife) unlawful (to himself), it is obligatory upon him to make an expiation of *Thihar*. Everything other than the wife (that is vowed as forbidden) must be expiated for by the expiation of an oath.

### Important Notes:

1. Whoever vows to give away all of his wealth, it is sufficient for him to give away a third of it if the vow was unrestricted. If the vow was a vow of relentlessness (i.e. said in anger to prevent someone from something), then it is sufficient for him to make the expiation of an oath only.

2. Whoever vows to do an act of obedience (to Allāh) and he dies, his successor (trustee) fulfills it on his behalf in his place. This is due to what has been authenticated that a woman said to Ibn 'Umar that her mother vowed to pray in *Masjid Quba'*, then she died (before doing so). So he (Ibn 'Umar) commanded her to pray on her behalf at *Masjid Quba'*.

[1] 'Abdur-Razzaq and An-Nasa'i with the wording, "There is no vowing in disobedience (to Allāh), nor regarding what one does not possess."

## Killing Animals

### Its Definition

Killing animals is to slaughter an animal that is permissible to eat, or sacrifice such an animal.

### What is Slaughtered (*Dhabihah*) and Sacrificed (*Nahr*)

All sheep, from the normal sheep to goats. Likewise all types of birds, such as chickens and other pheasants - these are all slaughtered (*Dhabihah*), but not sacrificed (*Nahr*). Allāh the Almighty says:

﴿وَقَدْ بَيْتَهُ بِذَنْبٍ عَظِيمٍ﴾

﴿And We ransomed him (with a great deal) Bidhibihin Azīm.﴾  
(37:107)

Meaning a ram.

Also cows may be slaughtered (*Dhabihah*) due to Allāh's statement:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذَبَحُوا بَقَرَةً﴾

﴿Verily Allāh commands you that you slaughter a cow.﴾ (2:67)

It is also permissible to sacrifice (*Nahr*) a cow, as it is confirmed that the Prophet ﷺ sacrificed a cow. This is because it has two ways of being killed: slaughtering and sacrificing. However, the camels are only sacrificed (*Nahr*) and not slaughtered (*Nahr*). Indeed the Prophet ﷺ sacrificed the camels while they were standing and with the left leg tied. (Al-Bukhari and Muslim)

### The Definition of Slaughtering (*Dhabihah*) and Sacrificing (*Nahr*)

Slaughtering (*Dhabihah*) is to cut the throat, the esophagus

and the two jugular veins. Sacrificing (*Nahr*) is to stab the camel in its *Labbah*. The *Labbah* is the place where the neck of the animal is fettered, and it is the place where the tool for sacrificing reaches to the heart so the animal dies quickly.

## How to Slaughter and Sacrifice

In reference to slaughtering (*Dhabihah*), it is that the sheep is laid down on its left side, facing the *Qiblah*. This is done after preparing the sharp tool of sacrificing (i.e. knife). Then the person who is slaughtering says:

«بِسْمِ اللَّهِ وَاللَّهُ أَكْبَرُ»

“*Bismillaah, Wallaahu Akbar* (In the Name of Allāh, and Allāh is the Most Great).”

He finishes off the animal that is being slaughtered by cutting its throat, esophagus and two jugular veins in one quick moment.

Concerning sacrificing (*Nahr*), it is that the camel is tied up by its left leg while standing. Then the person stabs it, piercing it in its *Labbah* (from the neck into the heart) while saying:

«بِسْمِ اللَّهِ وَاللَّهُ أَكْبَرُ»

“*Bismillaah, Wallaahu Akbar* (In the Name of Allāh, and Allāh is the Most Great).”

The stabbing movement is continued until the soul of the animal leaves (i.e. it is dead). This is due to the statement of Ibn 'Umar when he passed by a man who had made his she camel kneel in order to slaughter it, “Make her stand up while she is fettered. This is the Sunnah of Muhammad ﷺ.” (Al-Bukhari and Muslim)

## Conditions for the Correctness of Slaughtering

The following are the conditions for the correct (i.e.

acceptable) slaughtering of an animal:

1. That the tool for slaughtering should be sharp, causing the blood to flow. This is due to the Prophet's statement:

«مَا أَنَهَرَ الدَّمَ، وَذَكَرَ عَلَيْهِ اسْمُ اللَّهِ فَكُلْ، لَيْسَ الْعَظْمُ وَالظُّفْرُ»

*«Whatever causes the blood to pour out and the Name of Allāh has been mentioned over it, then eat. But not the bone or the nail (i.e. do not use them to slaughter an animal).» (Al-Bukhari and Muslim)*

2. *At-Tasmiyyah* (mentioning the Name of Allāh) is that the person says, “*Bismillaah, Wallaahu Akbar* (In the Name of Allāh, and Allāh is the Most Great),” or that he says, “*Bismillaah* (In the Name of Allāh),” only. This is due to Allāh the Almighty's statement:

﴿وَلَا تَأْكُلُوا مِمَّا لَمْ يَذْكُرْ اسْمَ اللَّهِ عَلَيْهِ﴾

*«And do not eat from that on which Allāh's Name has not been pronounced.» (6:121)*

And the Prophet's statement:

«مَا أَنَهَرَ الدَّمَ، وَذَكَرَ اللَّهُ عَلَيْهِ فَكُلُوا»

*«Whatever causes the blood to flow and the Name of Allāh has been mentioned over it, then eat (it).» (Al-Bukhari and Muslim)*

3. Cutting the throat under the midsection of the neck (Adam's apple) while also cutting the esophagus and the two jugular veins in one quick moment.

4. The qualification of the person who does the slaughtering. This is that the slaughterer should be a sane, mature Muslim, or a child who is discerning. There is also no problem if the slaughterer is a woman or a person of the Book (i.e. a Christian or Jew). This is due to Allāh the Almighty's statement:

﴿وَمِنْ عَمَلِهِمُ الْقَوْلُ هَٰؤُلَاءِ يَكْتُبُ إِلَهُكَ﴾

﴿And the food of People of the Scripture is lawful to you.﴾ (5:5)

Their food has been explained as meaning their slaughtered animals.

5. If the sacrifice or slaughter of an animal is not possible due to its falling into a well or its fleeing, it is permissible to kill it by striking it in any part of its body with what will cause its blood to flow. This is due to the Prophet's statement when a camel fled and the people did not have a horse (to chase it), so a man shot it with his arrow and stopped it:

«إِنَّ لِهَذِهِ الْبَهَائِمِ أَوَابِدَ كَأَوَابِدِ الْوَحْشِ، فَمَا فَعَلَ مِنْهَا هَذَا فَأَفْعَلُوا بِهِ هَكَذَا»

*«Verily these livestock animals have wild natures like the wildness of the wild animal. So whatever it does from this wild behavior, then do like this to it.»* (Al-Bukhari and Muslim)

So the people of knowledge have made an analogy from this for every animal that one is not able to slaughter properly at its throat or its heart.

### Important Notes:

1. The slaughtering of an unborn animal (in the womb) is to slaughter its mother. It is good to eat it if it is fully formed and its hair has begun to grow. The Messenger of Allāh ﷺ was asked about this and he said:

«كُلُوهُ إِنْ شِئْتُمْ، فَإِنَّ ذَكَاتَهُ ذَكَاءُ أُمِّهِ»

*«Eat it if you wish, for verily its slaughtering was the slaughtering of its mother.»* (Ahmad and Abu Dawud, and it is Hasan)

2. Not mentioning the Name of Allāh (when slaughtering) forgetfully does not harm the slaughter, as the *Ummah* (community, followers) of Muhammad ﷺ are not held accountable for what they do forgetfully. This is due to the *Hadith*:

«رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اسْتَكْرَهُوا عَلَيْهِ»



«The mistakes of my Ummah (followers) have been lifted, as well as (their) forgetfulness and what they have been forced to do.» (At-Tabarani with a *Sahih* chain of narration)

And his statement:

«ذَبِيحَةُ الْمُسْلِمِ حَلَالٌ، ذَكَرَ اسْمَ اللَّهِ أَوْ لَمْ يَذْكُرْ، إِنَّهُ إِنْ ذَكَرَ لَمْ يَذْكُرْ إِلَّا اسْمَ اللَّهِ»

«The slaughtering of the Muslim is lawful (Halal), whether he mentioned the Name of Allāh or not. For verily if he had remembered, he would not have mentioned anything other than the Name of Allāh.»<sup>[1]</sup>

3. Exaggerating in slaughtering until the head of the animal is cut off is wrong. However, in this case the meat is eaten with no offense.

4. If the one doing the slaughtering does the opposite of what is expected by sacrificing (*Nahr*) that which should be slaughtered (*Dhabihah*) or slaughtering that which should be sacrificed, it (the meat) may be eaten, however it is disliked.

5. The sick animal, the strangled animal, the animal that has been struck with something (i.e. a bludgeoned blow), the animal that has fallen, the animal that has been gored (i.e. butted by another animal) and the animal that has been partially eaten by a predatory animal - if it is found while still alive, such that it may actually be killed by slaughtering and not due to the effects of its illness or other causes and it is thus slaughtered, is permissible to eat it. This is due to Allāh the Almighty's statement:

﴿إِلَّا مَا ذَكَّيْتُمْ﴾

«Unless you are able to slaughter it (before its death).» (5:3)

[1] Abu Dawud reported it as a *Mursal* narration and it is *Sahih*. It is not suitable to use this *Hadith* as a proof in this matter, except if the person left off mentioning Allāh's Name, forgetfully.

Meaning, you came upon it while it was still alive and you finished it off by slaughtering it.

6. If the person doing the slaughtering lifts his hand before completing the slaughtering, then he returns it after a long period of time, the people of knowledge have said: His sacrificial animal is not eaten unless he completes its slaughter the first time.

## Game Animals

### Its Definition

"Game animal" refers to whatever is hunted from the wild land animals or the water animals that dwell in the sea.

### Its Ruling

Game animals are permissible for whoever is not in *Ihram* (sacred state) for *Hajj* or *'Umrah*. This is due to Allāh the Almighty's statement:

﴿وَإِذَا حَلَلْتُمْ فَاصْطَادُوا﴾

﴿And when you have finished the *Ihram* (of *Hajj* or *'Umrah*), you may hunt.﴾ (5:2)

However, it is disliked to hunt game simply for sport and play.

### Its Types

Game animals are of two types: The animals of the sea, which include everything that lives in the sea, such as fish and other sea creatures.

Its ruling is that it is permissible for the person in *Ihram* and the person who is not in *Ihram*.

Game animals of the land, which are of differing species. Whatever Islamic law has allowed of them, then they are permissible, and whatever it has prohibited, then it is not allowed.

## Killing Game Animals

Slaughtering the animal of the sea is achieved by its death, as it is not eaten only when it is alive. This is due to the Prophet's statement:

«أُحِلَّتْ لَنَا مَيْتَانِ: الْحُوتُ وَالْجَرَادُ»

«Two dead creatures have been made lawful for us (to eat): the fish and the locust.» (Al-Bayhaqi and Al-Hakim, and it is *Sahih*)

Regarding the game animal of the land, if it is caught alive it must be killed, and it is not permissible to eat it without killing it. This is due to the Prophet's saying:

«وَمَا صِدَّتْ بِكَالِيبِ غَيْرِ الْمُعَلَّمِ وَأَذْرَكْتَ ذَكَاتَهُ فَكُلْ»

«And what you have hunted with your untrained dog and you are able to kill it (yourself), then eat it.» (Al-Bukhari and Muslim)

If you catch the animal after it has already died, it is permissible to eat it under the following conditions:

1. If the person who killed it is someone whose slaughtering is lawful, like him being a sane, discerning Muslim.
2. That the person who killed it mentioned the Name of Allāh when shooting or sending out the hunting animal. This is due to the Prophet's statement:

«مَا صِدَّتْ بِقَوْسِكَ فَلَذَكَّرْتَ اسْمَ اللَّهِ عَلَيْهِ فَكُلْ، وَمَا صِدَّتْ بِكَالِيبِ غَيْرِ الْمُعَلَّمِ فَأَذْرَكْتَ ذَكَاتَهُ فَكُلْ»

«Whatever you hunt with your bow and you mentioned the Name of Allāh over it, then eat it. And whatever you hunt with your untrained dog and you are able to kill it (yourself), then eat it.» (Al-Bukhari and Muslim)

3. That the hunting tool - if it is not a hunting animal - be sharp enough to break the skin (of the animal). If it is not sharp, like a stick and a stone, then it is not correct to eat

what was hunted with it, because it (the animal) is like that which has been struck (with a blunt blow). The exception to this, of course, is if the animal is caught while it is still alive and then it is killed (by the hunter). This is due to the Prophet's statement when he was asked about the *Mi'radh*.<sup>[1]</sup>

«إِذَا أَصَابَ بِالْعَرَضِ فَلَا تَأْكُلْ فَإِنَّهُ وَفِيذٌ»

«If it is struck by the blunt part (i.e. thus killing the animal) then do not eat it, for verily it is that which has been struck.»  
(Al-Bukhari)

If a hunting animal, such as a dog or a falcon or a hawk kills the game, the hunting animal must be trained. This is due to Allāh's statement:

﴿وَمَا عَلَّمْتُم مِّنَ الْجَوَارِحِ مُكَلِّبِينَ يَقُولُونَ إِنَّمَا عَلَّمَكُمُ اللَّهُ فَكُلُوا مِمَّا أَسْكَنَ عَلَيْكُمْ وَادْكُرُوا اسْمَ اللَّهِ عَلَيْهِ﴾

«And those beasts and birds of prey which you have trained as *Jawarih*, training and teaching them (to catch) in the manner as directed to you by Allāh; so eat of what they catch for you, but pronounce the Name of Allāh over it.» (5:4)

And the Prophet's statement:

«وَمَا صِدَّتْ بِكَ الْمُعَلَّمُ فَادْكُرْ اسْمَ اللَّهِ عَلَيْهِ ثُمَّ كُلْ»

«And whatever you have hunted with your trained dog, then mention the Name of Allāh over it and eat it.» (Al-Bukhari)

**Note:** The sign of the trained hunting animal, and particularly the dog, is that when it is called it responds, when it is summoned it comes and when it is reprimanded it is restrained. However, the restraint when scolded is not considered in animals other than dogs if it is not possible.

4. That the hunting dog is not helped by other dogs in

[1] A hunting instrument made of wood.

catching game, because the hunter does not know who actually caught the animal - was it the dog whom Allāh's Name was mentioned over upon sending him out or the other dogs? This is due to the Prophet's statement:

«إِنْ وَجَدْتَ مَعَ كَلْبِكَ كَلْبًا غَيْرَهُ وَقَدْ قُتِلَ فَلَا تَأْكُلْ فَإِنَّكَ لَا تَدْرِي أَيُّهُمَا قَتَلَهُ»

*«If you find another dog with your dog and the game animal has been killed, do not eat it, for verily you do not know which of them killed it.»* (Al-Bukhari and Muslim)

5. That the dog does not eat anything from the game animal. This is due to the Prophet's statement:

«إِلَّا أَنْ يَأْكُلَ الْكَلْبُ فَلَا تَأْكُلْ فَإِنِّي أَخَافُ أَنْ يَكُونَ إِنَّمَا أَمْسَكَ عَلَى نَفْسِهِ»

*«Except if the dog eats (of the game). Then do not eat it, for verily I fear that it only caught the animal for itself.»* (Al-Bukhari and Muslim)

And Allāh says:

﴿كُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ﴾

﴿So eat from what they catch for you.﴾ (5:4)

### Important Notes:

1. If the game animal gets away from the hunter and later the hunter finds it dead with the mark of the arrow and no other mark (i.e. of something else that may have killed it), then it is permissible to eat it. This is allowed as long as more than three nights have not passed before the animal is found. This is due to the Prophet's statement concerning the one who finds his game after three (nights):

«كُلْ مَا لَمْ يَشْنِ»

*«Eat (it) as long as it does not have a foul odor (i.e. from rotting).»* (Muslim)

2. If an animal is hunted and then it falls into water and

dies, it is not permissible to eat it because its death was caused by the water and not the shooting.

3. If a limb of the game animal is severed by the hunting animal, it is not permissible to eat that limb, because it is included in the Prophet's statement:

«وَمَا قُطِعَ مِنْ حَيٍّ فَهُوَ مَيْتٌ»

«And whatever is severed from one who is living, then it is dead.»<sup>[1]</sup>

## Food

### Its Definition

The meaning of food is everything that is eaten of grains, dates and meat.

### Its Ruling

The fundamental principle regarding all types of foods is that they are permissible. This is due to the statement of Allāh the Almighty:

﴿هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا﴾

﴿It is He Who has created for you all that is on earth.﴾ (2:29)

Thus, nothing of it (food) is forbidden, except for what is excluded by an evidence of the Book (Al-Qur'an) or the Sunnah or sound analogy (Al-Qiyas As-Sahih). For verily the Legislator has forbidden (some) foods, because they are harmful to the body or corruptive to the intellect, just as He forbade (some) foods for other nations besides this Muslim nation merely as a test (for them). Allāh the Almighty said:

<sup>[1]</sup> Ahmad and At-Tirmithi, with the wording, "Whatever is severed from the animal while it is alive, then it is dead." Disparaging remarks have been made concerning its chain of narration, but it is suitable to be acted upon.

﴿فَقُطِرَ مِنَ الذِّبْتِ هَادُوا حَرَمْنَا عَلَيْهِمْ طَيْبَاتٍ أُجِلَّتْ لَهُمْ﴾

«For the wrongdoing of the Jews, We made unlawful for them certain good food which had been lawful for them.» (4:160)

## The Types of Prohibited Foods

**(a) That which has been forbidden by an evidence of the Book (Al-Qur'an):**

1. The food of someone else who does not own it in any manner of ownership that would make it permissible for him to eat it. This is due to Allāh the Almighty's statement:

﴿وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ﴾

«And eat up not one another's property unjustly.» (2:188)

And the statement of the Messenger ﷺ:

«فَلَا يَخْلُبَنَّ أَحَدٌ مَائِيَّةَ أَحَدٍ إِلَّا بِإِذْنِهِ»

«And no one should milk the cow of anyone else, except with his permission.» (Al-Bukhari and Muslim)

2. Dead animals (that have not been slaughtered), which are animals that have died of natural causes, such as strangulation, being struck with a blow, falling, being gored or butted by another animal and being partially eaten by a predatory animal.

3. Pouring blood, which is blood that runs when killing the animal. Likewise, blood that is not from slaughter animals is not permissible, whether it is pouring or not, and whether it is a little or a lot.

4. Pork (pig meat) and likewise any other part of the pig, such as its blood, fat and other than them.

5. Whatever is sacrificed for other than Allāh, which is that which has had something else other than the Name of Allāh mentioned over it (during slaughtering).

6. That which has been slaughtered on an altar that is a sign or symbol for what is worshipped other than Allāh or it is used as a means of intercession to Allāh.

The proof of (the prohibition of) these six things is Allāh's statement,

﴿حُرِّمَتْ عَلَيْكُمْ أَلْبَنَةُ وَالْدَّمُ وَلَحْمُ الْخَنَازِيرِ وَمَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ وَالْمُنْخَفَقَةُ وَالْمَوْفُوذَةُ وَالْمُتَرَدِّيَةُ وَالنَّطِيحَةُ وَمَا أَكَلَ السَّبُعُ إِلَّا مَا ذَكَّيْتُمْ وَمَا ذُبِحَ عَلَى النُّصُبِ﴾

﴿Forbidden to you (for food) are: Al-Maitah (animals that are not slaughtered), blood, the flesh of swine, and what has been slaughtered for other than Allāh and that which has been killed by strangling, or by a violent blow, or by a headlong fall, or by the goring of horns - and that which has been (partly) eaten by a wild animal - unless you are able to slaughter it (before its death) - and that which is sacrificed (slaughtered) on An-Nusub (stone-altars).﴾ (5:3)

Thus, these things are prohibited by the Mighty Book (Al-Qur'an).

### **(b) What has been forbidden due the Prophet's prohibiting it:**

1. Domestic donkeys. This is due to the statement of Jabir, may Allāh be pleased with him, "On the day of Khaibar the Messenger of Allāh ﷺ forbade (eating) the meat of domestic donkeys and he allowed (eating) the meat of horses." (Al-Bukhari and Muslim)

2. Mules. This is due to an analogy between them and domestic donkeys, so they fall under the ruling of that which has been forbidden (i.e. the donkeys). This is also due to the statement of Allāh the Almighty:

﴿وَالْفَيْلَ وَالْإِبِلَ وَالْحَمِيرَ لَكُمْ رُحُومًا﴾

﴿And the horses, mules and donkeys, for you to ride.﴾ (16:8)

This is a proof in its manner of address that necessitates the prohibition of eating them. If it is said, "How can



horses be lawful (to eat) while the evidence concerning mules and horses is one in the same?" The reply to this is that the horses are excluded by a text, which is the permission of the Messenger ﷺ to eat them, as was mentioned in the *Hadith* of Jabir that preceded.

3, 4. Every predatory animal that has fangs (or tusks), like the lion, the tiger, the bear, the cheetah, the elephant, the wolf, the dog, the jackal, the weasel, the fox, the squirrel and other animals that have fangs to hunt with. Also, those birds with talons, like the hawk, the falcon, the eagle, the peregrine falcon, the kite, the sparrow hawk, the owl and other birds that have talons to hunt with. This is due to the statement of Ibn 'Abbas, "The Messenger of Allāh ﷺ forbade every predatory animal with fangs and every bird with talons." (Muslim)

5. *Al-Jallalah*, which are animals that eat filth and it (the filth) is usually a part of their sustenance from the waste of livestock animals. An example of this type of animal is the chicken. This is due to what Abu Dawud recorded (At-Tirmithi and others also recorded it and it is a *Hasan Hadith*) from Ibn 'Umar that the Prophet ﷺ prohibited the meat of *Al-Jallalah* animals and their milk. Thus, they are not eaten until they are kept away from (eating) the filth for some days, during which their meat will become good. Also their milk is not drunk, until after they are kept away from the filth for some days, during which their milk will become good.

**(c) What is forbidden with the evidence being prevention of harm:**

1. Poison in general, due to the confirmation of its harm upon one's body.
2. Dirt, clay, stones and coal, due to their harm (if eaten) and their lack of benefit.
3. The foul, putrid things that the soul (naturally) dislikes and cringes from, such as bugs and other things, because

that which is disgusting causes illness and brings harm to the body.

**(d) What is forbidden with the evidence being avoiding the things that are impure:**

1. Every food or drink that has an impurity mixed in it. This is due to the statement of the Prophet ﷺ:

«فِي الْفَارَةِ تَقَعُ فِي السَّمَنِ إِنْ كَانَ جَامِداً فَأَلْقَوْهَا وَمَا حَوْلَهَا، وَكُلُوا الْبَاقِي، وَإِنْ كَانَ ذَائِباً فَلَا تَقْرُبُوهُ»

«Concerning the mouse that falls into cooking fat, if the fat is congealed (solid), throw the mouse out and whatever is around it, and eat the rest. If the fat is liquefied (melted) then do not go near it (i.e. don't eat it).»<sup>[1]</sup>

2. Everything that is impure in its nature, like human feces and animal droppings. This is due to the statement of Allāh the Almighty:

﴿وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ﴾

﴿And he makes unlawful Al-Khaba'ith (i.e. all evil and unlawful things).﴾ (7:157)

**What is Permitted from the Forbidden Foods for One Who is Compelled**

It is allowed for the person who is compelled due to extreme hunger, if he fears harm and destruction for himself, to eat from every forbidden thing that will preserve his life, except for poison. It makes no difference whether it is the food of someone else or a dead animal (that has not been slaughtered) or pork or anything else. This is under the condition that it does not exceed the amount that would save his life from destruction and he despises it, having no

[1] Abu Dawud, with a *Sahih* chain of narration and its origin is in Al-Bukhari.

desire for it. This is due to the statement of Allāh the Almighty:

﴿فَمَنْ أَضْطَرَّ فِي مَخْصَصَةٍ غَيْرِ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

﴿But as for him who is forced by severe hunger, with no inclination to sin, then surely Allāh is Oft-Forgiving, Most Merciful.﴾ (5:3)

## Drink

### Its Definition

The meaning of drink is every type of liquid thing that is drunk.

### Its Ruling

The fundamental principle regarding drinks is like the fundamental principle regarding foods, which is that they are permissible. This is due to Allāh the Almighty's statement:

﴿هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا﴾

﴿It is He Who created for you all that is on earth.﴾ (2:29)

The exception to this is whatever is excluded from this (being lawful) by an evidence, like:

1. Alcohol, due to Allāh the Almighty's statement:

﴿إِنَّمَا الْخَمْرُ وَاللَّبَنُ وَالْأَصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ﴾

﴿Verily Al-Khamr (intoxicants), and gambling, and Al-Ansab, and Al-Azlam (arrows for seeking luck or decision) are an abomination of Shaitan's (Satan's) handiwork. So avoid (strictly all) that (abomination).﴾ (5:90)

And the Prophet's statement:

﴿لَعَنَ اللَّهُ الْخَمْرَ، وَشَارِبَهَا، وَسَاقِيَهَا، وَبَائِعَهَا وَمُبْتَاعَهَا وَعَاصِرَهَا، وَمُعْتَصِرَهَا، وَحَامِلَهَا، وَالْمَحْمُولَةَ إِلَيْهِ، وَآكِلَ ثَمَرِهَا﴾

«Allāh has cursed intoxicants, the one who drinks them, the one who serves them, the one who sells them, the one who buys them, the one who presses them (i.e. their fruit), the one who seeks to get them pressed, the one who carries (transports) them, the one to whom they are carried and the one who devours (i.e. makes us of) their price.» (Abu Dawud and Al-Hakim, and its chain of narration is authentic)

2. Every type of liquid and alcoholic beverage that intoxicates. This is due to the Prophet's statement:

«كُلُّ مُسْكِرٍ خَمْرٌ، وَكُلُّ خَمْرٍ حَرَامٌ»

«Every intoxicant is Khamr and every Khamr is forbidden (Haram).» (Muslim)

3. The juice of the two mixes, which is the combining of ripe and fresh dates, or raisins and fresh dates in a single container and pouring water over them until they become a sweet drink. It makes no difference whether this drink intoxicates or not, as the Prophet ﷺ prohibited this in his statement:

«لَا تَتَّبِدُوا الزُّهُوَ وَالرُّطْبَ جَمِيعًا، وَلَا تَتَّبِدُوا الزَّيْبَ جَمِيعًا، وَلَكِنْ ائْتَبِدُوا كُلَّ وَاحِدٍ مِنْهُمَا عَلَى حَذَرٍ»

«Do not make drink by mixing ripe and unripe dates together (in water), nor raisins (and fresh dates) together. Rather make drinks from each one of them individually (by putting it in water).» (Al-Bukhari and Muslim)

4. The urine of those animals that are forbidden to be eaten due to their impurity, and impurity is forbidden (for consumption).

5. The milk of the animals whose meat is not eaten, except for human milk, for verily it is lawful (Halal).

6. Whatever is confirmed as being harmful to the body, like gases (fuels) and other similar things.

7. The various types of smokes (which are classified as drinks

in Arabic), like tobacco, marijuana and cigarettes, as some of them are harmful to the body and some of them are intoxicating. Some of them weaken (the body) and some of them have a foul odor that bothers whoever is with the smoker among humans and angels. Whatever is like this, then it is prohibited legally (i.e. according to the Islamic Law).

### **What is Permitted from the Forbidden Things for One Who is Compelled**

It is permissible for the one who is choking to flush out that which is lodged in his throat of food and other things with alcohol (*Al-Khamr*) if he does not find anything other than it, in order to save his life. Likewise, it is permissible for the person who is experiencing extreme thirst, and with it he fears for his life, to drink forbidden drinks in order to repel his thirst. This is due to Allāh the Almighty's statement:

﴿إِلَّا مَا اضْطُرَّرْتُمْ إِلَيْهِ﴾

﴿Except under compulsion of necessity.﴾ (6:119)

## Offensive Crimes and Their Laws

### Crimes committed against an Individual

#### Its Definition

A crime committed against an individual is to transgress against someone by taking his life or harming some of his limbs or wounding some part of his body.

#### Its Ruling

It is forbidden to take a person's life without a right to do so, or damage any of his limbs or harm him in any way in his body. After disbelief (*Kufr*) there is no sin greater than killing a believer. This is due to Allāh the Almighty's statement:

﴿وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا﴾

«And whoever kills a believer intentionally, his recompense is Hell to abide therein; and the wrath and the curse of Allāh are upon him, and a great punishment is prepared for him.» (4:93)

And the Prophet's statement:

«أَوَّلُ مَا يُقْضَى بَيْنَ النَّاسِ يَوْمَ الْقِيَامَةِ فِي الدِّمَاءِ»

«The first thing that will be judged between mankind on the Day of Resurrection will be the blood (i.e. murders).» (Al-Bukhari and Muslim)

And his statement:

«لَنْ يَزَالَ الْمُؤْمِنُ فِي فُسْحَةٍ مِنْ دِينِهِ مَا لَمْ يُصِبْ دَمًا حَرَامًا»

«A believer will never cease having spaciousness (i.e. pardon)

*in his religion as long as he does not shed unlawful blood.*» (Al-Bukhari)

## The Types of Crimes Against Individuals

Crimes committed against a person are of three types, which are the following:

### 1. Intentional Murder

This is when the criminal intends to kill a believer or harm him. Thus he attacks him, striking him with a piece of metal or a stick or a stone, or throwing him from an elevated place, or drowning him in water, or burning him with fire, or strangling him, or feeding him poison that kills him, or damaging his limbs, or wounding his body.

The ruling concerning this intentional crime is that it necessitates the punishment of retaliation. This is due to the statement of Allāh the Almighty:

﴿وَكُتِبْنَا عَلَيْهِمْ فِيهَا أَنْ النَّفْسَ بِالْنَفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنفَ بِالْأَنفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ﴾

﴿And We ordained therein for them: Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal.﴾ (5:45)

And the Prophet's statement:

«مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يُودَى، وَإِمَّا أَنْ يُقَادَ»

«Whoever has a (relative of his) murdered has the choice between two options: either he may receive payment of blood money or he may choose retaliation (against the murderer).»

And he ﷺ said:

«مَنْ أَصِيبَ بِدَمٍ أَوْ خَبَلٍ - أَوْ جُرْحٍ - فَهُوَ بِالْخِيَارِ بَيْنَ إِحْدَى ثَلَاثٍ: إِمَّا أَنْ يَتَّقَصَّ أَوْ يَأْخُذَ الْعُقْلَ - أَوْ الدِّيَّةَ - أَوْ يَغْفُو، فَإِنْ أَرَادَ رَابِعَةً فَخُذُوا عَلَى يَدَيْهِ»

«Whoever is stricken with murder (of a relative) or a wound,

then he has the choice between one of three things: either he may seek retaliation or take the payment of blood money, or pardon (the offender). If he seeks to do a fourth thing (i.e. something else), then take him by his hand (i.e. stop him).» (Ahmad, Abu Dawud and Ibn Majah, and its chain of narration contains some weakness. However, it is acted upon as its origin is in *Sahih Al-Bukhari* and *Sahih Muslim*.)

## 2. That Which is Similar to Intentional Murder

This is when someone intends to harm another person without killing him, or he intends to wound him. For example, he hits him with a stick in a light manner that normally would not kill, or punching him in the arm, or striking him on his head, or throwing him into a small amount of water, or yelling in his face, or threatening him, and he dies because of it.

The ruling regarding this type of crime is that it obligates the offender to pay blood money to the victim's relative and to make an expiation (for the sin). This is due to Allāh the Almighty's statement:

﴿وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مَوْمَنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ ۖ إِلَّا أَنْ يَصَدَّقُوا﴾

﴿And whosoever kills a believer by mistake, (it is ordained that) he must set free a believing slave and a compensation (blood money, i.e. Diya) be given to the deceased's family unless they remit it.﴾ (4:92)

## 3. Murder by Mistake

This is when a Muslim does something that is permissible for him to do, such as shooting or hunting or cutting the meat of an animal, for example, and the tool misses and strikes someone who dies or is wounded by this.

The ruling regarding this type of crime is just like the ruling of the second type (see number 2 above). However, the payment of blood money is lighter in this regard and



the offender is not considered sinful. This is different than the murder that was similar to the intentional type, as the payment of blood money is more severe in that case and the offender is considered sinful.

## Laws of Offensive Crimes

### Conditions for the Obligation of Retaliation:

Retaliation is not obligatory for murder or damage of limbs or injury unless all the following conditions are present:

1. That the person killed was someone whose blood was protected (i.e. he was not supposed to be killed). So if the person was an adulterer or an apostate (from Islam) or a disbeliever, there is no retaliation, as the blood of these people is shed due to their crime.
2. That the murderer is of a responsible age. This means that he must have reached the age of puberty and be of sound mind. If the murderer is a child or an insane person, there is no retaliation due to lack of responsibility. This is due to the Messenger's statement:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الصَّبِيِّ حَتَّى يَبْلُغَ، وَالْمَجْنُونِ حَتَّى يُفِيقَ، وَالنَّائِمِ حَتَّى يَسْتَيْقِظَ»

«The pen is lifted from three (people): the child until it reaches puberty, the insane person until he regains his intellect and the sleeping person until he awakens.» (See earlier.)

3. That the murdered person is of the same status as the murderer in his religion, and his status of freedom and slavery. A Muslim is not killed for a disbeliever, nor a free person for a slave. This is due to the Prophet's statement:

«لَا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ»

«A Muslim is not killed for a disbeliever.» (Ahmad and At-Tirmithi and it is *Hasan*)

Also, because the slave is valued so his status is based upon his value. This is due to the statement of 'Ali, may Allāh be pleased with him: "It is from the Sunnah that a free man is not killed for a slave." Also, there is the *Hadith* of Ibn 'Abbas, may Allāh be pleased with him: "The free man is not killed for a slave." (Al-Bayhaqi with a good chain of narration)

4. That the murderer is not the parent of the murdered person, whether a father or mother, or a grandfather or grandmother. This is due to the Prophet's statement:

«لَا يُقْتَلُ وَالِدٌ بَوْلَدِهِ»

«A parent is not killed for its child.»<sup>[1]</sup>

## The Conditions for Carrying Out the Retaliation

The person who has the right to retaliate is not given his right to retaliation unless the following conditions are present:

1. That the person who possesses the right is responsible. So if the person is a child or insane, the criminal (murderer) is imprisoned until the child reaches the age of puberty or the insane person gains his intellect. Then, at that time they may seek retaliation or take a payment of blood money or pardon the murderer. This has been reported from the Companions (may Allāh be pleased with them).

2. That the successors of the murdered person agree to retaliation, If some of them pardon the murderer there is no retaliation. Whoever does not pardon the murderer still

[1] Ahmad, At-Tirmithi and Ibn Jarud graded it *Sahih*. Malik held the view that the parent is not killed for its child if the murder was not intentional. However, if the murder was committed intentionally, purposefully and with hostility, like choking the child with a rope or slaughtering it with a blade, then the parent is killed (in retaliation) for the child's murder.

receives his share of the blood money.

3. That it is guaranteed that while carrying out the retaliation, no transgression will be committed. This is because the harm should not be more than what was done like it, and that no one should be killed other than the murderer. Also, a woman who has an unborn child in her womb should not be killed until she delivers the child and weans it. This is due to the Prophet's statement when a woman committed intentional murder:

«لَمْ تُقْتَلْ حَتَّى تَضَعَ مَا فِي بَطْنِهَا إِنْ كَانَتْ حَامِلًا، وَحَتَّى تَكْفُلَ وَلَدَهَا»

*«She should not be killed until she delivers that which is in her womb if she is pregnant, and until she takes care of her child (i.e. she nurses and weans it).»*

4. That carrying out the retaliation be in the presence of the ruler or his deputy so that there will be assurance of no injustice or transgression.

5. That the retaliation be carried out with a sharp weapon. This is due to the Prophet's statement:

«لَا قَوْدَ إِلَّا بِالسَّيْفِ»

*«There is no retaliation except with a sword.»<sup>[1]</sup>*

## **The Option Between Retaliation, Blood Money and Pardoning<sup>[2]</sup>**

If the Muslim is given the obligation of retaliation for

[1] Recorded by Ibn Majah, and As-Suyuti was silent about it. In this issue some of the people of knowledge hold the view that the murderer should be killed with the same thing that he killed with. If it was a sword, he is killed with a sword and if it was a rock, he is killed with a rock. This is due to the *Hadith* that is agreed upon by Al-Bukhari and Muslim that the Messenger ﷺ ordered that the man who crushed the head of the girl with a stone have his head crushed (with a stone).

[2] Some of the people of knowledge hold the view that murder by

murder, he has the option to choose between the following: that retaliation be carried out for him or take the blood money or to pardon (the criminal). This is due to the statement of Allāh the Almighty:

﴿فَمَنْ عَفَىٰ لَمْ مِنْ أُخِيهِ مَنٌ ۖ فَالْيَتَابُ ۚ بِالْمَعْرُوفِ وَأَدَاكَ إِلَيْهِ بِإِحْسَانٍ﴾

«But if the killer is forgiven by the brother (or the relatives) of the killed against blood money, then adhering to it with fairness and payment of the blood money to the heir should be made in fairness.» (2:178)

And His statement:

﴿فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ﴾

«So whoever pardons and makes reconciliation, his reward is with Allāh.» (42:40)

And the Messenger's statement:

«مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يُوْدَىٰ، وَإِمَّا أَنْ يُقَادَ»

«Whoever suffers murder (of his relative), he has the choice between two options: either he may receive payment of blood money or he may choose retaliation (against the murderer).» (Al-Bukhari and Muslim)

And his statement:

«مَا عَفَا رَجُلٌ عَنْ مَظْلَمَةٍ إِلَّا زَادَهُ اللَّهُ بِهَا عِزًّا»

«No man pardons a transgression except that Allāh increases him in honor because of it.»

### Important Notes:

Whoever chooses blood money, then he loses his right to retaliation. If he requests retaliation after that it is not

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assassination is not pardoned, even if the successors of the murdered victim pardon the murderer. For verily, it is the right of the ruler to not pardon the murderer and instead, punish him by giving him one hundred lashes and exiling him for a year.

possible for him to have it. And if he seeks revenge (on his own) and commits murder, he is killed. However, if he chooses retaliation, he has the right to change his mind and accept blood money instead.

If the murderer dies, the successor of the murder victim has no right to any retaliation other than receiving blood money. This is because the retaliation is excused by the death of the murderer and it is not permissible to kill anyone other than the murderer in any circumstance. This is due to Allāh the Almighty's statement:

﴿وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوِائِهِ سُلْطَنًا فَلَا يُسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا﴾

﴿And whoever is killed wrongfully, We have given his heir the authority. But let him not exceed limits in the matter of taking life. Verily, he is helped (by the Islamic law).﴾ (17:33)

Exceeding the limits in the matter of taking life has been explained as killing someone other than the murderer.

Expiation for murder is obligatory upon every person who committed accidental murder or the murder that is similar to intentional murder. It makes no difference whether the murdered victim was an unborn child in the womb or an extremely aged person, a free man or a slave. The expiation is manumission of a believing (i.e. Muslim) slave. If the person cannot find a slave to free, he must fast two consecutive months. This is due to Allāh's statement:

﴿وَتَحْرِيرُ رَقَبَةٍ مِّمَّا مَلَكَتْ أَيْمَانُكُمْ فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا﴾

﴿And a believing slave must be freed. And whosoever finds this (the penance of freeing a slave) beyond his means, he must fast for two consecutive months in order to seek repentance from Allāh. And Allāh is Ever All-Knowing, All-Wise.﴾ (4:92)

## The Criminal Offense that Harms the Limbs

### Its Definition

The criminal assault that harms the limbs is when a person transgresses against another and gouges his eye out or breaks his leg or cuts off his hand, for example.

### Its Ruling

If the attacker did this act intentionally, and he is not the parent of the victim, and the victim is equal with the attacker in regards to Islam (i.e. they are both Muslims) and status of freedom (i.e. neither of them are slaves), then he (the attacker) is retaliated against on behalf of the victim by having whatever part he cut off, cut off from himself and he is wounded with the same thing that wounded him.<sup>[1]</sup> This is due to the statement of Allāh the Almighty:

﴿وَالْجُرُوحُ قِصَاصٌ﴾

﴿and the wounds equal for equal﴾ (5:45)

The exception to this is if the victim accepts a payment of blood money or he pardons the aggressor.

## The Conditions of Retaliation Regarding Limbs

The following things are conditional in order for retaliation to be carried out for harm to limbs:

1. That there is assurance that no injustice will be done in carrying out the retaliation. If there is fear of injustice, then no retaliation is allowed.
2. That the retaliation is possible. If it is not possible to retaliate, retaliation is avoided and the blood money is taken.

<sup>[1]</sup> If an adult and a child both take part in an intentional assault murder, the adult is killed and the child is obliged to pay half of the blood money. This was said by Malik in *Al-Muwatta'*.

3. That the limb that is sought (in retaliation) be the same in name and location (on the body) as the damaged limb (of the victim). In other words, a right hand is not cut off for the cutting off of a left hand, a hand is not cut off for a foot and a original (normal) finger is not cut off for an extra finger, for example.

4. Equality of the two limbs. The damaged limb and the limb that is to be taken in retaliation should be equal in healthiness and completion. So the paralyzed hand should not be taken for the healthy hand, and the blind eye should not be taken for the good eye.

5. If the wound is on the head or face and it (the head) is fractured, there is no retaliation for it, unless the wound does not reach the bone (i.e. a flesh wound only). Every wound that it is not possible to get retaliation for due to the danger involved (of possible death), then there is no retaliation for it. Thus, there is no retaliation for breaking a bone or an internal stomach wound. In such cases it is only required that the offender pay the blood money.

### **Important Notes:**

- A group of people is killed for (killing) one person, and the limbs of a group of people are taken for one limb (of one person) if they all took part in the crime in a direct fashion. This is due to the statement of 'Umar, may Allāh be pleased with him: "If all of the people of Sana'a had worked together in killing him, I would have killed them all on his behalf (in retaliation)." (Recorded by Malik in *Al-Muwatta'* and its origin is in Al-Bukhari) He said this after killing seven people who had killed a man from the people of Sana'a.

- The spreading effects of the crime are also included. So if someone assaults another person by cutting off his finger, and the wound does not heal until his entire hand becomes paralyzed or he dies, then the retaliation or blood money is determined based upon that.

- Concerning the spreading effects of the retaliation, they are not considered. So if someone cuts off the hand of another person, and he is retaliated against by his hand being cut off, and he dies as a result of the wound, he does not get anything in compensation. The only exception is if there was some injustice involved in the retaliation against him, such as the cutting being done with a dull instrument or a poisoned instrument, for example. In such a case the resulting effects would be included (for consideration of retaliation).

- No retaliation is taken for a wound or limb before it heals. This is due to the Prophet's prohibition of retaliation for a wound before it heals.<sup>[1]</sup> This is because it is not guaranteed that the wound will not spread to the rest of the body and destroy it (i.e. kill the person). Therefore, if someone opposes this rule and exacts retaliation before recovering, then his wound spreads (i.e. infection) and destroys another limb, he has no right to seek retaliation for the effects of the spreading. This is because he opposed the prohibition of retaliating before recovery.

## The Blood Money

### Its Definition

Blood money is what is given to the person who has the right of retaliation for bloodshed.

### Its Ruling

Blood money is legislated by the statement of Allāh the Almighty:

﴿وَدِيَّةٌ مِّمَّا كَسَبَتْهُ إِلَّا أَهْلُهَا إِلَّا أَنْ يَصَدَّقُوا﴾

[1] Ad-Daraqutni and it is weak due to a defect in that it is *Mursal*. For this reason some of the scholars have said that this is only recommended and not obligatory.



﴿And a compensation (blood money i.e. Diya) be given to the deceased's family unless they remit it.﴾ (4:92)

And the Messenger's statement:

«مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يُدَى، وَإِمَّا أَنْ يُنَادَ»

«Whoever suffers murder (of a relative), he has the choice between two options: either he may receive payment of blood money or he may choose retaliation (against the murderer).»

(Al-Bukhari and Muslim)

## Those Required to Pay Blood Money

Blood money is obligatory upon everyone who kills a person, whether directly or by any other means. If he intended the murder, the blood money comes from his wealth. If the murder was similar to intentional murder or accidental murder, the blood money is due from his relatives, as this is what the Messenger ﷺ decreed. Two women fought each other and one of them hit the other with a stone, thus killing her and the unborn child in her womb (as she happened to be pregnant). So the Messenger of Allāh ﷺ ruled that the blood money of the woman (who committed the murder) was due from her relatives. (Al-Bukhari and Muslim)

The relatives ('*Aqilah*) are the group of people who pay the '*Aql*, which is the blood money. They are the male relatives from the person's fathers (i.e. father, grandfather, great-grandfather, etc.), his brothers, the sons of his brothers, his paternal uncles and the sons of his paternal uncle. Thus, they distribute the amount of the blood money payment among themselves and each of them pays according to his situation. They pay the blood money in installments for a period of three years. So every year they pay a third of the blood money until it is paid in full. If they are able to pay it all at one time, then there is no prohibition against that.

## Those who do not Have to Pay Blood Money

Blood money is not required in the case of a parent who disciplines his child and the child dies, or a ruler who disciplines his subjects, or a teacher who disciplines his pupil and the pupil dies. This is if they are not excessive in beating and they do not transgress the customary limit in disciplining.

## The Amounts of the Blood Money Payments

### Blood Money for a Life

If the victim was a free Muslim, his blood money is one hundred camels, or one thousand weights (i.e. dinars) of gold, or twelve thousand dirhams of silver, or two hundred cows, or two thousand sheep. If the murder was similar to intentional murder, the penalty is made heavier in that forty of the one hundred camels should be pregnant females. If the murder was accidental, then the penalty should not be made burdensome. This is due to the Prophet's statement:

«أَلَا وَإِنْ قَتِيلَ خَطَأً بِالْعَمْدِ بِالسَّوْطِ وَالْعَصَا وَالْحَجَرِ، فِيهِ دِيَّةٌ مُغَلَّظَةٌ، مِائَةٌ مِنَ الْإِبِلِ، مِنْهَا أَرْبَعُونَ مِنْ نَثِيَّةٍ إِلَى بَازِلٍ عَامِيَا كُلُّهُنَّ خَلِيفَةٌ»

*«Verily the person who is murdered accidentally with the intent of harm by a whip, a stick and a stone, has a heavy due of blood money, which is one hundred camels with forty of them being nine year-old females that are all pregnant.»<sup>[1]</sup>*

If the murder was intentional, then the matter is left to the preference of the victim's relatives. They have the right to request more than the (normal) blood money amount, because they possess the right of retaliation. Thus, they

<sup>[1]</sup> All of the *Sunan* compilers and Al-Bukhari in *At-Tarikh*. It has a good chain of narration and a supporting witness in Abu Dawud.

(the family of the murderer) may try to convince the victim's successors to drop their request for retaliation in return for a payment that is more than the blood money.

The proof for the amount of the blood money is in the statement of Jabir, may Allāh be pleased with him, "The Messenger of Allāh ﷺ obligated the owners of camels to pay one hundred camels, the owners of cows to pay two hundred cows and the owners of sheep to pay two thousand sheep."<sup>[1]</sup> There is also the statement of Ibn 'Abbas, may Allāh be pleased with him, "Verily a man was killed, so the Prophet ﷺ made his blood money twelve thousand dirhams."<sup>[2]</sup> Likewise, there is that which was related in the book of 'Amr bin Hazm, which the *Ummah* (Muslim nation) in its entirety has met with acceptance, "and upon the people who possess gold is the payment of one thousand dinars (gold coins)."<sup>[3]</sup> So whichever of these five mentioned things are given by the murderer, the successor of the victim must accept it.

If the victim was a free Muslim woman, her blood money is half the blood money of the Muslim man. This is due to what Malik recorded in *Al-Muwatta'* from 'Urwah bin Az-Zubayr that it used to be said, "Verily the woman's blood money (of some injury) is the same as the man's as long as it is less than a third of the man's complete blood money (for murder). If it reaches a third (or more) then the woman is treated in the matter of blood money as getting half the blood money of the man."

If the victim was a non-Muslim under the protection of the Islamic State (*Dhimmi*), whether he was a Jew, a Christian

[1] Abu Dawud and there is weakness in its chain of narration. However, the majority of the scholars act according to it.

[2] Abu Dawud, An-Nasa'i, Ibn Majah and At-Tirmithi as a statement of the Prophet ﷺ. It has also been reported as a *Mursal* narration and that is more correct and well known.

[3] An-Nasa'i and it was graded *Sahih* by a group of scholars, and Ahmad and Al-Hakim were among them.

or of some other religion, his blood money is half the blood money of the Muslim. The blood money of their females is half the blood money of their males. This is due to the Prophet's statement:

«عَقْلُ الْكَافِرِ نِصْفُ دِيَةِ الرَّجُلِ»

«The blood money of the disbeliever is half the blood money of the (Muslim) man.» (At-Tirmithi and it is Hasan)

If the victim was a slave, his blood money is his value no matter how much it is. This is because he is considered a valued possession so his price must be paid.

If the victim was a male or female still in the womb (i.e. a fetus) its blood money is a flawless male or female slave, as the Messenger of Allāh ﷺ ruled that the payment for the murdered unborn child was a flawless male or female slave. This has been related in the *Sahih* (of Al-Bukhari). This applies if the child was alive in the womb and is delivered dead (due to an assault). However, if the child is delivered from the womb of its mother alive and then it dies (due to an assault during the pregnancy), then retaliation is taken or blood money is paid in full.

Note: The value of the flawless slave according to some of the people of knowledge, is a tenth of the blood money of the unborn child's mother. So her value (for blood money) is fifty dinars (gold coins) or six hundred dirhams (silver coins).

### Blood Money for Limbs

Complete payment of blood money is required in the following cases:

1. Removal and loss of the intellect.
2. Loss of hearing and loss of the ears.
3. Loss of vision or damaging the eyes.

4. Loss of voice by cutting of the tongue or the lips.
5. Loss of the sense of smell by cutting off the entire nose.
6. Loss of the ability to have sex by cutting off the penis or crushing the two testicles.
7. Loss of the ability to stand or sit by breaking the back.

This is based upon what was recorded in the book of 'Amr bin Hazm, which the Messenger of Allāh ﷺ had (ordered to be) written: "That blood money is required for the nose if it is amputated, the tongue, the two lips, the testicles, the penis, the backbone and the two eyes." (An-Nasa'i and a group of the *Imams* of *Hadith* have graded it authentic) This is also due to the ruling of 'Umar, may Allāh be pleased with him, when a man who struck another man, causing him to lose his hearing, his sight, his ability to have sex and his intellect, and the victim lived and did not die. 'Umar judged that he (the assailant) had to pay four blood money compensations.

The blood money of the woman for her limbs is half of that for the limbs of the man. In reference to wounds, if the blood money for the wound reaches a third of the blood money of the man himself (i.e. if he were killed), then half the blood money of the man is due. If the blood money for the wound is less than a third (of the blood money of a man), then she (the woman) is considered the same as a man in regards to the blood money of her wound.

**Half of the Blood Money is Required in the Following Cases:**

1. One of the eyes.
2. One of the ears.
3. One of the hands.
4. One of the feet (or legs).
5. One of the lips.
6. One of the buttocks.
7. One of the eyebrows.
8. One of the breasts of the woman.

Note: If one of the fingers is cut off, the obligatory blood money is ten camels. This is due to the Prophet's statement:

«دِيَةُ أَصَابِعِ الْيَدَيْنِ أَوْ الرَّجْلَيْنِ سَوَاءٌ، عَشْرٌ مِنَ الْإِبِلِ لِكُلِّ أَصْبَعٍ»

«The blood money of the fingers or the toes is the same ten camels for each finger (or toe).» (At-Tirmithi and he graded it *Sahih*)

For a tooth, five camels are due (as blood money), due to the statement of the Prophet ﷺ in the book of 'Amr bin Hazm:

«وَفِي السِّنِّ خَمْسٌ مِنَ الْإِبِلِ»

«And regarding the tooth, five camels (are due as blood money).»<sup>[1]</sup>

## The Blood Money for *Shajaj* and Other Wounds

### The *Shajaj*

#### Its Definition

The *Shajaj* are wounds on the head or in the face. It was known to be ten things according to the *Salaf*, five of them have clear instruction from Islamic Legislation regarding their blood money and five of them do not have any set limits from Islamic Legislation regarding their blood money.

#### Its Ruling

The ruling concerning the five of them that have clarification from the Islamic Legislation is as follows:

1. *Al-Mawdhihah*: These are the wounds that show and expose the bone and their blood money is five camels. This

[1] Therefore, for two teeth, ten camels are due, and so forth. There is no difference between the front teeth, the side teeth, the molars or the incisors.

is due to the Prophet's statement:

«فِي الْمَوَاضِحِ خَمْسٌ مِنَ الْإِبِلِ»

«Regarding the *Mawadhih* (bone exposing wounds), five camels are due (as blood money).» (Abu Dawud, At-Tirmithi, An-Nasa'i and its chain of narration is *Hasan*)

2. *Al-Hashimah*: These are the wounds that crush the bone, meaning they break it. Regarding these wounds, the blood money is ten camels. This is due to the statement of Zayd bin Thabit, may Allāh be pleased with him, "The Prophet ﷺ obligated ten camels for *Al-Hashimah* (the bone breaking wounds)."<sup>[1]</sup>

3. *Al-Manqilah*: These are the wounds that move the bone from its (proper) place. Regarding these wound, fifteen camels are due, due to what was reported in the book of 'Amr bin Hazm, "and regarding *Al-Manqilah* (wounds that move the bones), fifteen camels are due (as blood money)."

4. *Al-Ma'mumah*: These are the wounds that reach the exterior skin of the brain. Regarding these wounds a third of the (complete) blood money is due. This is just as is related in the book of 'Amr bin Hazm, "and regarding the *Ma'mumah* (the blood money is) a third of the (complete) blood money."

5. *Ad-Damighah*: These are the wounds that break (i.e. pierce) the exterior skin of the brain and they are deeper than the *Ma'mumah*. The ruling concerning these wounds is the same as the *Ma'mumah*, a third of the blood money.

The following are the five wounds for which there is nothing reported from Islamic Legislation to clarify their blood money;

1. *Al-Harisah*: These are the wounds that only harm the

<sup>[1]</sup> Al-Bayhaqi, Ad-Daraqutni and 'Abdur-Razzaq with an authentic chain of narration to Zayd bin Thabit, may Allāh be pleased with him.

skin. This means that they tear the skin a little, but they do not cause any bleeding.

2. *Ad-Damiyyah*: These are the wounds that cause the skin to bleed and its blood to flow.

3. *Al-Badhi'ah*: These are the wounds that cut open the tissue beneath the skin, meaning they tear it.

4. *Al-Mutalahimah*: These are wounds that are deeper than the *Badhi'ah*, as they plunge deep into the tissue beneath the skin.

5. *Al-Samhaq*: These are the wounds that are only a thin layer away from reaching the bone.

The ruling concerning these five wounds according to the people of knowledge is that there is a ruling principle. That rule is that it is considered as if the injured victim is a slave whose value is estimated while he is unharmed without any effects of attack, and whose value is estimated while being scarred by an attack after it heals. The difference between the two values is determined in consideration of his original value when he was unharmed. So if it (the difference) is a sixth, the victim is given a sixth of his blood money, and if it is a tenth, he is given a tenth of his blood money, and so forth.

What is easier than this, particularly in our present times, is that the *Mawdhihah* should be made the basis of measurement, as it is that which exposes the bone, but does not break it. So the blood money for it is five camels. Therefore, the *Shajaj* of five camels is made the basis of analogy. So whatever is like a fifth of it, then its blood money is a camel, and whatever is like a third of it, then its blood money is three camels, and so forth. The analogy is made between them (the wounds) by means of the doctors who are specialists in the different types of wounds of the body.



## **The Wounds**

### **Its Definition**

Wounds here refers to those wounds that are in places other than the head and the face on the other parts of the body.

### **Its Ruling**

Concerning the *Ja'ifah* - which is the wound that reaches the interior of the body cavity - a third of the (complete) blood money is due. This is due to what is in the book of 'Amr bin Hazm, "and concerning the *Ja'ifah*, a third of the blood money (is due)."

Concerning the rib, if it is broken and the bone mends itself, a camel is due (as blood money).

Concerning the breaking of the arm or the shinbone or the forearm, if it is set, two camels are due (as blood money), as the Companions gave this judgement (may Allāh be pleased with them).

Regarding everything other than what has been mentioned, the principle (in comparing values of slaves, as mentioned before) may be used or an analogy may be made based upon the *Mawdhihah*, which is easier.

## **How is the Violent Crime Confirmed?**

If the crime is less than murder, then it is confirmed by one of two matters: either by the confession of the perpetrator or by the testimony of two just witnesses.

If the crime is murder, then it is confirmed either by the confession of the murderer, the testimony of two just witnesses or by oath if there is *Lawdh* involved. *Lawdh* is obvious enmity that existed between the murdered victim and the person who is accused with the crime of murder.

## Taking the Oath

This is required in the case of a murdered victim whose relatives claim that a certain man or group killed him due to obvious enmity between them that was well-known by the people. Therefore, it seems likely that the murdered person was a victim of this enmity.

Another situation is that there was no enmity between the murdered victim and the accused and the only evidence is that one witness witnessed the murder. This requires taking an oath because the claim of murder cannot be confirmed except with the testimony of two just men. Thus, the witness of one person is considered like *Lawdh* and hence requires the oath. So the relatives of the murdered victim, who are the male heirs of the deceased and not the women, swear fifty oaths that are distributed among them based upon their inheritance from the deceased, that this is the person who killed the man.<sup>[1]</sup> If they swear, they have the right to the blood (i.e. execution) of the accused murderer, then they are allowed retaliation against him or they are given blood money.<sup>[2]</sup> If some of the heirs refrain from swearing an oath (against the accused), then the right (of retaliation) is dropped. Then the accused swears fifty oaths to them (that he did not commit the murder) and he is considered innocent.

Likewise, whoever is accused of murder, and there is no *Lawdh* involved, he is considered innocent by swearing one oath (that he did not do it). This is due to what has been

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<sup>[1]</sup> If the inheritors are not satisfied with the oath of the accused suspect, the government pays the blood money of their murdered relative and the accused is considered innocent.

<sup>[2]</sup> The view of the majority is that retaliation may not be taken against the accused by an oath and only the blood money is required because of it. This was the view of Ash-Shafi'i, Abu Hanifah and 'Umar bin 'Abdul-'Aziz. However, Malik and Ahmad both held the view that the accused may be retaliated against (i.e. executed) by the swearing of an oath.

recorded in the *Sahih* that the Messenger ﷺ had a murder case brought to him and he ruled that an oath must be taken concerning it. He said to the relatives of the murdered victim:

«أَتَحْلِفُونَ وَتَسْتَجِفُّونَ قَاتِلَكُمْ أَوْ صَاحِبَكُمْ؟»

«Will you all take an oath and seek the right (of retaliation) against your murderer or your companion?»

They replied, "How can we swear when we did not witness or see (anything)?" He (the Prophet ﷺ) said:

«فَتَبَرُّكُمْ الْيَهُودُ - أَيِ الْمَثْمُومُونَ - خَمْسِينَ يَمِينًا»

«So the Jews (i.e. the accused murderers) may declare themselves innocent of you (i.e. your claim against them) by fifty oaths?»

They said, "How can we take the oaths of a people who are disbelievers?" Therefore, the Prophet ﷺ paid the man's blood money himself.

## The Punishments (*Hudood*)<sup>[1]</sup>

### The Punishment (*Hadd*) for Intoxicants (*Al-Khamr*)

#### The Definition of *Al-Hadd* and *Al-Khamr*

*Al-Hadd* is the prevention by means of beating or killing (i.e. execution) against doing that which Allāh the Mighty and Majestic has forbidden. The *Hudood* of Allāh the Almighty are the prohibitions that He commanded to be avoided and not approached.

*Al-Khamr* is every kind of intoxicating drink, regardless of what type it is. This is due to the Prophet's statement:

«كُلُّ مُسْكِرٍ خَمْرٌ، وَكُلُّ خَمْرٍ حَرَامٌ»

«Every intoxicant is a *Khamr* and every *Khamr* is forbidden (*Haram*).» (Muslim)

#### The Ruling Concerning Drinking Them

It is forbidden to drink *Al-Khamr*, regardless of whether the amount is a little or a lot. This is due to the statement of Allāh the Almighty regarding its prohibition and the prohibition of gambling:

﴿فَهَلْ أَنْتُمْ مُنْتَهُونَ﴾

«So, will you not then abstain?» (5:91)

And His statement:

﴿فَاجْتَنِبُوا﴾

«So avoid it.» (5:90)

And the statement of the Messenger ﷺ:

[1] Singular: *Hadd*

«لَعَنَ اللَّهُ شَارِبَ الْخَمْرِ وَبَائِعَهَا»

«Allāh has cursed the drinker of *Al-Khamr* (intoxicants) and its seller.» (Abu Dawud and Al-Hakim with a *Sahih* chain of narration)

Also, the Prophet ﷺ implemented the *Hadd* on someone who drank it by beating him in the courtyard of the *Masjid*. This is related in the two *Sahihs* (Al-Bukhari and Muslim).

### **The Wisdom Behind its Prohibition**

The wisdom behind the prohibition of *Al-Khamr* is the preservation of the safety of the Muslim's religion, his intellect, his body and his wealth.

### **The Ruling Regarding its Drinker**

The ruling regarding whoever drinks *Al-Khamr*, and it is confirmed by his confession or the testimony of two just witnesses, is that he is punished by being beaten with eighty lashes on his back if he is a free man. If he is a slave, he is beaten with forty lashes. This is due to the statement of Allāh the Almighty regarding slave girls:

﴿مَمْلُوكًا نَصَفَ مَا عَلَى الْحُرِّ مِنَ الْعَذَابِ﴾

«So their punishment is half of that for free (unmarried) woman.» (4:25)

Therefore, the male slave is considered by analogy like the female slave in receiving half of the punishment, which is lashing.

### **The Conditions that make it Obligatory to Apply *Hadd* to its Drinker**

The conditions for applying the *Hadd* to the drinker of *Al-Khamr* is that the person should be a Muslim, who is sane, mature (i.e. has reached the age of puberty), who did so by his own choice, who knew that it is forbidden and who is healthy and not ill. However, the sick person is not exempt from the *Hadd* punishment. He is merely given time to recover from his illness. If he recovers from his illness, the

*Hadd* punishment is applied to him.

### **The *Hadd* is not Repeatedly Applied to its Drinker**

If the Muslim repeatedly drinks *Al-Khamr* a number of times and the *Hadd* punishment is applied to him, it is sufficient to establish the *Hadd* against him once, even if he repeatedly drank it numerous times. If he drinks again after the *Hadd* has been applied to him, then the *Hadd* is applied to him again another time and so forth. Every time he drinks (*Al-Khamr*) the *Hadd* is applied to him.

### **The method of applying the *Hadd* to the Drinker of *Al-Khamr***

The *Hadd* is applied to the drinker of *Al-Khamr* by him being made to sit on the ground and then he is beaten on his back with a whip. He is given eighty lashes which should be moderate, between the level of harsh and light. The woman is like the man, except that she is covered with a light garment that conceals her without protecting her from the beating.

**Note:** The *Hadd* punishment should not be implemented on the drinker of *Al-Khamr* during conditions (weather) of extreme cold or heat. Rather, the punishment should be delayed until the hours when the weather is mild during the moderate part of the day. Likewise, the *Hadd* should not be implemented on anyone who is drunk or sick. Rather, it should be delayed until he is in his right mind (i.e. not intoxicated) and healthy.

## **The *Hadd* of *Al-Qadhf***

### **Its Definition**

*Al-Qadhf* is to accuse someone of lewdness (i.e. illegal sexual intercourse), such as a man saying to another, "Oh you adulterer (or fornicator)," or his saying that he saw him committing illegal sexual intercourse or doing such and such lewd act of fornication or adultery or homosexuality.

## It Ruling

*Al-Qadhf* is one of the major sins. Allāh has declared whoever does it to be a sinner and He has nullified his attribute of fairness (i.e. trustworthiness). Allāh has also obligated in His statement that the *Hadd* should be established upon him:

﴿وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَا يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ ﴿٥﴾ إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

﴿And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever. They indeed are the *Fasiqu*n (rebellious against Allāh). Except those who repent thereafter and do righteous deeds; (for such) verily, Allāh is Oft-Forgiving, Most Merciful.﴾ (24:4-5)

## Its Hadd

The *Hadd* of *Al-Qadhf* is eighty lashes with a whip. This is due to Allāh the Almighty's statement:

﴿فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً﴾

﴿So give them eighty lashes.﴾ (24:4)

Also, the Messenger ﷺ gave the people of *Al-Ifk* (the slanderous lie against 'A'ishah) eighty lashes. (In the *Sahih*)

## The Wisdom Behind the Hadd of Al-Qadhf

Its wisdom is the preservation of the honor of the Muslim and protecting his dignity. It is also a preservation of the purity of the society from the spread of lewdness and indecencies among the Muslims, while they are the just and pure people.

## The Conditions for Establishing the Hadd of Al-Qadhf

The conditions for establishing the *Hadd* on one who

practices *Al-Qadhf* are the following:

1. That the person who is guilty of *Al-Qadhf* is an intelligent, mature (i.e. having reached the age of puberty) Muslim.
2. That the person who is accused of indecency is chaste and not known among the people as one who commits lewd acts.
3. That the person wrongly accused of indecency requests that the *Hadd* be implemented upon the accuser, as this is his right. If he wishes he may seek it and if he wishes he may pardon him.
4. That the person who has made the accusation does not have four witnesses who testify to the correctness of what he has accused the other person of.

If any of these conditions are not present, then no *Hadd* is to be implemented.

### **The Hadd of Az-Zina**

#### **Its Definition**

*Az-Zina* is forbidden sexual intercourse, whether it is done in the vagina or the anus.

#### **It Ruling**

*Az-Zina* is one of the greatest sins after disbelief (*Kufr*), associating partners with Allāh (*Shirk*) and murder. It is absolutely one of the greatest forms of lewdness. Allāh the Almighty made it forbidden in His statement:

﴿وَلَا تَقْرَبُوا الزَّيْنَىٰ إِنَّكُمْ كَانُمْ فَجِشَةً وَسَاءَ سَبِيلًا﴾

﴿And do not come near to Zina. Verily, it is a *Fahishah* (a great sin) and an evil way.﴾ (17:32)

He also made a *Hadd* punishment for the one who does it in His statement:



﴿الرَّائِيَةُ وَالرَّائِي فَاَجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةً جَلْدَةً﴾

«The male and female fornicator, flog each of them with a hundred stripes.» (24:2)

Among what was revealed of the Qur'an - although its wording was abrogated while its ruling was not - is His statement:

«وَالشَّيْخُ وَالشَّيْخَةُ إِذَا زَنَيَا فَارْجُمُوهُمَا الْبَيْتَةَ نَكَالًا مِّنَ اللَّهِ»

«"And the older man and woman (i.e. who have been married), if they commit illegal sexual intercourse (Zina; adultery), then definitely stone them (to death) as an exemplary punishment from Allāh."» (Al-Bukhari and Muslim)

And the Messenger ﷺ said concerning it:

«لَا يَزْنِي الرَّائِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ»

«The person who commits illegal sexual intercourse (Zina) does not do so while he is a believer.» (Al-Bukhari and Muslim)

And the Prophet ﷺ said when he was asked about the greatest sin:

«أَنْ تُزَانِيَ بِحَلِيلَةِ جَارِكَ»

«That you commit illegal sexual intercourse with your neighbor's wife.» (Al-Bukhari and Muslim)

### **The Wisdom Behind its Prohibition**

From the wisdom behind the prohibition of *Zina* is the preservation of the purity of the Islamic society, the protection of the Muslims' honor and the purification of their souls. It also keeps their dignity, preserves the nobility of their family lineage and the purity of their spirits.

### **The Hadd of Az-Zina**

The punishment for *Zina* differs according to the differences between the people who commit it. If the one who commits

*Zina* is not *Muhsan* which is a person who has never been married before in an Islamically valid marriage in which he was alone with the wife and had sexual intercourse with her, then he is given one hundred lashes and exiled from his land for a year. The woman who commits *Zina* while not being a *Muhsanah* is just like the man, except that if exiling her to another land would cause (more) corruption, she is not exiled. This is due to Allāh the Almighty's statement:

﴿الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ﴾

«The male and female guilty of fornication, flog each of them with a hundred stripes.» (24:2)

Also, there is the statement of 'Umar, may Allāh be pleased with him, that the Prophet ﷺ "Beat and exiled (the fornicators), and Abu Bakr beat and exiled (the fornicators) and 'Umar beat and exiled (the fornicators)." (Al-Bukhari) If the offender is a slave, he is given fifty lashes and he is not sent into exile as this would hinder the rights of his master to his service.

If the person who commits *Zina* is a man or woman who is (or has been legally) married, then they are stoned to death with rocks. This is due to what was recited but was abrogated (from recitation):

«وَالشَّيْخُ وَالشَّيْخَةُ إِذَا زَنَيَا فَارْجُمُوهُمَا أَلْبَتَّ نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ»

«"And the older man and woman (i.e. who have been married), if they commit illegal sexual intercourse (*Zina*; adultery), then definitely stone them (to death) as an exemplary punishment from Allāh, and Allāh is Most Mighty, Most Wise."» (Al-Bukhari and Muslim)

This is also due to the command of the Messenger of Allāh ﷺ to stone (the adulterers) and his doing so. For indeed he stoned Al-Ghamidiyyah and Ma'iz and he also stoned the two Jews (i.e. a Jewish man and woman who committed adultery), may Allāh curse them. (This is in the *Sahih*)

## Conditions for Establishing the *Hadd* of *Zina*

The following conditions are stipulated for the establishment of the *Hadd* upon those who commit *Zina*:

1. That the person who commits *Zina* is a Muslim who is intelligent, mature (i.e. has reached the age of puberty) and he chose to do so without being compelled. This is due to the Prophet's statement:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ، وَالتَّائِمِ حَتَّى يَسْتَقِظَ،  
وَالْمَجْنُونِ حَتَّى يَبْقِيَ»

«The pen has been lifted from three (people): from the child until he reaches puberty, the sleeping person until he awakens and the insane person until he is in his right mind.» (See earlier)

And his statement:

«رُفِعَ عَنْ أُمَّتِي الْخَطَاُ وَالنَّسْيَانُ وَمَا اسْتَكْرَهُوا عَلَيْهِ»

«Mistakes and forgetfulness have been lifted (i.e. it is not counted a sinful) from my Ummah (nation, followers) and (also) that which they have been compelled to do (unwillingly).» (At-Tabarani with Sahih chain of narration)

2. That the *Zina* should be absolutely confirmed. This is either by the person confessing against himself, while in a natural (normal) state, that he committed *Zina*, or by the testimony of four just witnesses that they saw him committing *Zina*. They must testify that they saw his private part in the private part of the woman whom he committed *Zina* with, just like the eye pencil (for kohl) in the jar of kohl and the rope in the well. This is due to the statement of Allāh the Almighty:

﴿وَالَّذِي يَأْتِيكَ الْفُجْءَةُ مِنْ نِسَائِكَ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ﴾

«And those of your women who commit illegal sexual intercourse, take the evidence of four witnesses from amongst

you against them. ﴿ (4:15)

And the statement of the Prophet ﷺ to Ma'iz:

«أَنْكَحْتَهَا؟»

«Did you have sex with her?»

He (Ma'iz) replied, "Yes." Then he (the Prophet ﷺ) said:

«كَمَا يَغِيبُ الْمِرْوَدُ فِي الْمُكْحَلَةِ وَالرَّسَا فِي الْبُئْرِ؟»

«Like the eye pencil disappears into the jar of kohl and the rope into the well?» (In the Sahih)

It (Zina) may also be confirmed by the appearance of pregnancy if the woman is asked about it and she does not produce any evidence. However, she may avert the *Hadd* from herself, for instance, in the case of her being raped or if she had sex in a marriage that was found to be invalid, or if she was ignorant of the prohibition of *Zina*. If she brings anything that could possibly cast doubt upon her guilt, the *Hadd* is not implemented on her. This is due to the Prophet's statement:

«ادْرُؤُوا الْحُدُودَ بِالشُّبُهَاتِ»

«Refrain from (implementing) the punishments if there are any doubts (i.e. concerning the guilt).»

There is also the Prophet's statement:

«لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا»

«If I were to stone anyone without any proof, I would have certainly stoned her.»

He said this about the wife of an 'Ajlanī.<sup>[1]</sup> (Al-Bukhari and Muslim)

3. That the person who committed adultery does not retract

<sup>[1]</sup> This woman was accused by her husband of committing *Zina*. So he took the oath of *Al-Li'an* against her and the Messenger of Allāh

his confession. If he retracts his confession before the *Hadd* is implemented on him by admitting that he lied, and he says (for example), "I did not commit *Zina*," then the *Hadd* is not carried out on him. This is due to what has been authenticated concerning Ma'iz, that when he was being hit with stones he fled. However, the Companions caught him and stoned him to death. So the Messenger ﷺ was informed of that and he said:

«فَهَلَّا تَرَكْتُمُوهُ!؟»

*«Why did you all not leave him alone?!»*

It was as if he considered his fleeing a retraction of his confession. It was also reported that while he was fleeing he was saying, "Take me back to the Messenger of Allāh ﷺ, for verily my people have killed me and deceived me regarding myself. And they told me that the Messenger of Allāh ﷺ would not kill me." (In the *Sahih*)

### **How the *Hadd* is to be Established Upon Those Who Commit *Zina***

A ditch is dug in the ground for the adulterer that reaches up to his chest. Then he is placed in it and stones are thrown at him until he dies in the presence of the Imam or his deputy and a group of the Muslims, who should be no less than four people in number. This is due to the statement of Allāh the Almighty:

﴿وَلْيَشْهَدْ عَذَابَهَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ﴾

﴿And let a group of the believers witness their punishment.﴾  
(24:2)

The woman is like the man in this matter except that her

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ﷺ separated them (i.e. divorced them). Then the woman gave birth to a boy who resembled the man who she was accused of committing *Zina* with. Thus, the Messenger of Allāh ﷺ made this statement.

garments are wrapped tightly around her so that she does not become exposed. This is in reference to the stoning. Regarding the lashing of the person who is not (nor have they ever been) married, then it is done in the same manner as the *Hadd* of *Al-Qadhf* (accusation of illegal sex) and drinking *Al-Khamr* (intoxicants).

### Important Notes:

- The *Hadd* of homosexuality is stoning to death, with there being no difference between the married or unmarried person. This is due to the Prophet's statement:

«مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلُ قَوْمِ لُوطٍ فَأَقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ»

«Whoever you find doing the deed of the people of Lut (i.e. sodomy), then kill the doer and the one to whom it is being done.» (Abu Dawud, At-Tirmithi and others, and it is *Sahih*)

The methods of killing them (the two who committed the homosexual act) that have been related from the Companions have differed. From among them there were those who burned them with fire. Others among them killed them by stoning them with stones. Ibn 'Abbas said about them, "The highest building in the village should be sought, then they should be thrown from it upside down (i.e. on their heads). Then they should be stoned after that."

- Whoever has sex with an animal, it is obligatory to punish him with the severest types of punishment, such as beating and imprisoned, since he has committed an act of lewdness that is forbidden (*Haram*) by the consensus (of the Muslim scholars). The severe punishment should be a rectification of the deviance of the person's nature. Reports (from the Companions) have been related that suggest that the person who commits this act should be killed along with the animal that he had sex with. However, these reports are not confirmed to the extent that they establish a definite proof. Thus, the punishment that is allowable for the Imam to implement that will take care of correcting the corruption

is sufficient.

- If the male and female slave commit *Zina*, their only *Hadd* is that they are to be lashed, even if they are married. This is due to the statement of Allāh the Almighty:

﴿فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ﴾

«So upon them punishment is half of that for free (unmarried) women.» (4:25)

So because death cannot be divided into half, fifty lashes has been specified as the punishment instead of stoning.

Also, the master has the right to lash his male or female slave (for committing *Zina*). He also may take their case to the Imam. This is due to the statement of (the Companion's name is omitted), "The Messenger of Allāh ﷺ sent me to a black slave girl who committed *Zina* so that I could lash her according to the *Hadd*. However, I found her in her period of bleeding (after childbirth). So I informed the Messenger of Allāh ﷺ about that and he said:

«إِذَا تَعَالَتْ مِنْ نِفَاسِهَا فَاجْلِدْهَا خَمْسِينَ»

«When she has completed her postnatal bleeding give her fifty lashes.» (It was reported by 'Abdullah bin Ahmad in *Al-Musnad*)

And the statement of the Prophet ﷺ:

«إِذَا زَنَتْ أَمَةٌ أَحَدِكُمْ فَتَبَيَّنَ زِنَاهَا فَلْيَجْلِدْهَا الْحَدَّ، وَلَا يُرَبِّ عَلَيْهَا»

«If one of your slave girls commits *Zina*, and it is clear that she did it, lash her according to the *Hadd* and do not rebuke her.» (Al-Bukhari and Muslim)

## Concerning the *Hadd* for Stealing

### Its Definition

Stealing is taking the guarded wealth in a secret manner. For example, if someone enters into a shop or house and

takes clothing or grain or gold or something similar.

### Its Ruling

Stealing is one of the major sins. Allāh declared it forbidden in His statement:

﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾

«The male and female thief, cut off (from the wrist joint) their hands as a recompense for that which they committed, a punishment by way of example from Allāh. And Allāh is All-Powerful, All-Wise.» (5:38)

And the Messenger of Allāh ﷺ cursed the person who committed it (theft), saying:

«لَعَنَ اللَّهُ السَّارِقَ يَسْرِقُ الْبَيْضَةَ فَتُقَطَّعُ يَدُهُ»

«Allāh has cursed the thief who steals the egg and thus has his hand cut off.» (Al-Bukhari and Muslim)

And he (the Prophet ﷺ) negated *Al-Iman* (faith) from the person who does it while he is doing it, saying:

«لَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ»

«The thief does not steal and remain a believer while he is stealing.» (Al-Bukhari and Muslim)

The Prophet ﷺ explained that it (cutting the hand of the thief) is a punishment from the *Hudood Allāh*, and that it is established upon everyone, he said:

«وَالَّذِي نَفْسِي بِيَدِهِ لَوْ سَرَقَتْ فَاطِمَةُ ابْنَتُ مُحَمَّدٍ لَقَطَعْتُ يَدَهَا»

«I swear by Him in Whose Hand is my soul, if Fatimah, the daughter of Muhammad, stole, I would certainly cut off her hand.» (Muslim)

### How is Stealing Confirmed?

Stealing is confirmed by one of two things: either by the



clear confession of the thief that he stole, in a confession that is not beaten or coerced, or by the testimony of two just witnesses, who both saw him stealing. If he retracts his confession, then his hand is not to be cut off. In such a case he is only required to pay the sum of the stolen item, as it is recommended to prompt the person to deny the crime, in order to save the hand of the Muslim. This is due to the Prophet's statement:

«ادْرُؤُوا الْحُدُودَ بِالشُّبُهَاتِ مَا اسْتَطَعْتُمْ»

*«Refrain from (implementing) the punishments as much as you are able if there are any doubts (i.e. concerning the guilt).»*

### **The Conditions of the Cutting**

The obligation of cutting off the hand is dependent upon the existence of the following conditions:

1. That the thief is responsible, sane and mature (i.e. at least the age of puberty). This is due to the *Hadith*:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: . . .»

*«The pen is lifted from three (people)...»*

And among these three people are the insane person and the child.

2. That the thief is not the parent of the owner of the stolen property, nor the owner's child, husband or wife. This is due to the fact that each of these people has rights upon the other regarding his wealth.

3. That the thief cannot be someone who has a possible claim of ownership to the stolen wealth in any way whatsoever. For instance, someone who steals his security deposit (i.e. collateral) back from the person he deposited it with, or he steals his wage from the person who hired him.

4. That the thing which was stolen is lawful property. It should not be an intoxicant (*Al-Khamr*) or a flute (i.e.

musical instrument), for example. Also, the value of the stolen item should be at least worth a quarter of a dinar. This is due to the Prophet's statement:

«لَا تُقَطَّعُ الْيَدُ إِلَّا فِي رُبْعِ دِينَارٍ فَضَاعِدًا»

«The hand is not cut off except for a quarter of a dinar or more.» (Muslim)

5. That the stolen property was in a protected place, like a house, or a shop, or a barn, or a box, or something similar that is considered a safe place.

6. That the property is not taken in a manner of *Khulsah*, which is that the person snatches something from in front of its owner and flees with it. Also, the property should not be taken due to *Al-Ghasb*, which is when one takes it due to force and under compulsion (i.e. desperate need). It also should not be taken due to *Al-Intihab*, which is that the person takes it from the spoils of war. This is due to the Prophet's statement:

«لَيْسَ عَلَى خَائِنٍ وَلَا مُتَّهَبٍ وَلَا مُخْتَلِسٍ قَطْعٌ»

«There is no cutting (of the hand) for the *Kha'in* (one who is treacherous), nor the *Muntahib* (one who takes from the spoils of war) nor the *Mukhtalis* (one who snatches and runs while the owner is watching him).» (At-Tirmithi and Ibn Hibban, and they both graded it *Sahih*)

## What is Obligatory Upon the Thief

It is obligatory upon the thief, after he has been rightfully incriminated to:

1. Replace the stolen wealth if he has it or if he is wealthy. If he spent (or destroyed) the stolen wealth, then he is obligated to repay it to the person from whom he stole it.<sup>[1]</sup>

[1] There is a difference of opinion over the thief whose hand is cut off, as to whether he has to replace the stolen wealth. Ahmad and Ash-

2. The cutting is like a right that belongs to Allāh as the punishments are the sacred limits set by Allāh. If cutting the hand is not obligated due to a lack of all of the necessary conditions, it is required that the stolen wealth of the owner be replaced, whether it was a little or a lot. It does not matter if the thief is wealthy or poor.

### **How the Cutting is to be Performed**

The right hand of the thief should be cut at the joint of the hand (i.e. the wrist). This is due to the recitation of Ibn Mas'ud, "So cut their right hands." Then it is completed by placing it (the person's arm) in boiling oil in order to cut off the openings of the veins and stop the bleeding. It is also recommended that the hand be hung on the person's neck for a period of time as a lesson of admonition.<sup>[1]</sup>

### **That for Which There is no Cutting**

It is not permissible to cut the hand for stealing wealth that was not kept in a protective place, nor for wealth that is valued at less than a quarter of a dinar, nor for fruits on trees or dates on date-palm trees. In such cases the price of the fruit is doubled upon him if he took from it while it was still in its sheath and he is disciplined by being beaten. Concerning that which he has eaten and it is in his stomach, then there is nothing due upon him regarding it. This is due to the Prophet's statement when he was asked

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Shafi'i said that he has to replace it. Malik said that the wealthy person has to replace what he stole and the poor person does not. Abu Hanifah said, "There is no obligation upon him (the thief) to replace what he stole. This is due to the statement of the Messenger ﷺ, 'I establish the *Hadd* punishment upon the thief, so there is no debt due upon him.'" However, this *Hadith* is weak.

[1] This is due to what At-Tirmithi and others related with a weak chain of narration, that the Prophet ﷺ ordered that the hand of a thief be cut off and then he ordered that his hand be hung around on his neck.

about the *Harisah*<sup>[1]</sup> that was taken from its pastures:

«فِيهَا ثَمْنُهَا مَرَّتَيْنِ، وَضَرْبُ نَكَالٍ، وَمَا أُخِذَ مِنْ عَطْيِهِ فَبِيهِ الْقَطْعُ إِذَا بَلَغَ مَا يُؤْخَذُ مِنْ ذَلِكَ ثَمَنَ الْمِجَنِّ»

«Its price should be repaid twice (i.e. doubled) and the person should be beaten as an exemplary punishment. And what is taken from its 'Atn, then the thief's hand is cut if what he took reaches the value of the Mijann.»<sup>[2]</sup> (Ahmad and An-Nisai)

And it was said, "O Messenger of Allāh! What about that fruit and what he took of it that was still in its sheath (i.e. before ripening)?" He ﷺ replied:

«مَنْ أَخَذَ بِقَمِيهِ وَلَمْ يَتَّخِذْ حُبْنَةً فَلَيْسَ عَلَيْهِ شَيْءٌ، وَمَا اخْتَمَلَ فَعَلَيْهِ ثَمْنُهُ مَرَّتَيْنِ وَضَرْبُ نَكَالٍ، وَمَنْ أَخَذَ مِنْ أَجْرَانِهِ فَبِيهِ الْقَطْعُ إِذَا بَلَغَ مَا يُؤْخَذُ مِنْ ذَلِكَ ثَمَنَ الْمِجَنِّ»

«Whoever took in with his mouth (i.e. for eating) and he did not take it sheathed, then there is nothing on him. And whatever he took away (sheathed) then he has to pay its price twice (i.e. doubled) and he is given an exemplary beating. And whoever takes (the fruit) from its place of drying, then his hand is cut off if the amount of what he took reaches the value of a shield.» (Ahmad and An-Nasa'i, and Ibn Majah recorded a narration with the same meaning. At-Tirmithi recorded it and graded it *Hasan*, and Al-Hakim graded it *Sahih*.)

### Important Notes:

- If the owner of the property pardons the thief and he does not take him to the ruler (for punishment), then there is no

[1] The *Harisah* is a sheep that is taken from its place of grazing, like the forests, the mountains and places that lead to them from the places where animals graze.

[2] 'Atn is the place where the camel kneels down and it is the stable of the sheep. The meaning here is the place where the camels, sheep and cows are kept. The *Mijann* is the shield or that which is used to defend against weapons.

cutting of the hand. If he takes him to the ruler, then cutting his hand becomes obligatory and no one's intercession is accepted after that. This is due to the statement of the Prophet ﷺ:

«فَهَلَا كَانَ قَبْلَ أَنْ يَأْتِيَنِي بِهِ»

«He should have forgiven him before he brought him to me.»

(The Sunan compilers, and it was graded authentic by Al-Hakim and Ibn Jarud)

He said this in the case of someone who wanted to pardon a thief after incriminating him and bringing him before the Messenger of Allāh ﷺ for the judgement against him (i.e. his sentencing).

- Interceding regarding the *Hudood* punishments is not allowed if the case reaches the authority (i.e. the ruler). This is due to the Prophet's statement:

«مَنْ حَالَتْ شَفَاعَتُهُ دُونَ حَدٍّ مِنْ حُدُودِ اللَّهِ، فَقَدْ ضَادَّ اللَّهَ فِي أَمْرِهِ»

«Whoever's intercession obstructs a punishment among the punishments of Allāh, then verily he has opposed Allāh in His command.» (Abu Dawud and Al-Hakim, who graded it Sahih)

And due to the Prophet's statement to Usamah, may Allāh be pleased with him:

«أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟»

«Are you interceding concerning a punishment from the punishments of Allāh?» (Al-Bukhari and Muslim)

- The ruling of the man who breaks into homes, kills their residents and takes their property is the ruling of *Al-Muharibin* (those who wage war against the Muslims).

## The Punishment for *Al-Muharibin*

### Definition

The meaning of *Al-Muharibin* here is: A person or people from the Muslims who pull out weapons in the face of the people and cut off their path by robbing those who pass, killing them and taking their possessions with their force and strength.

### Ruling

The laws concerning the *Muharibin* are as follows:

1. They are admonished and requested to repent. If they repent, then their repentance is accepted, and if they refuse they are fought, and fighting against them is *Jihad* in the way of Allāh. So whoever of them is killed, his blood is considered wasted, and whoever of the Muslims is killed (while fighting them), then he is a martyr (*Shahid*). This is due to Allāh the Almighty's statement:

﴿فَقَاتِلُوا آلِي بَنِي حَنَظَلَةَ حَتَّى يَقْبِضُوا إِلَيْكُمْ أَمْرُ اللَّهِ﴾

﴿So fight you against the one who outrages - till it compiles with the Command of Allāh.﴾ (49:9)

2. Whoever is captured of the *Muharibin* before he repents, then the *Hadd* is implemented upon him. He is either killed or crucified (i.e. hung up on a tree or wooden stake and left to die) or his hands are cut off or his feet are cut off or, he is taken out to a waste area and left to die. This is due to Allāh the Almighty's statement:

﴿إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خَلْفِهِمْ أَوْ يُنْفَوْا مِنَ الْأَرْضِ﴾

﴿بِأَمْرِ اللَّهِ﴾

﴿The punishment of those who wage war against Allāh and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut

*off from opposite sides, or be exiled from the land.* ﴿5:33﴾

This is also due to what the Messenger of Allāh ﷺ did to the 'Uraniyyin who took the camels of charity, killed their shepherd and fled. (Al-Bukhari and Muslim)

Hence, the Imam is given the option of applying this punishment to them. Some of the people of knowledge hold the view that they are put to death if they committed murder, their hands and feet should be cut off from opposite sides if they took possession, and they are expelled from the land or imprisoned until they repent if they did not shed any blood or take any wealth.

3. If they repent before they are overpowered by giving up fighting and surrendering themselves to the ruler, then the right of Allāh (i.e. *Hadd* punishment) is lifted from them. They only remain accountable for the rights of the servants (i.e. the people). Therefore, they are brought to justice concerning the blood that they shed and the wealth that they took. So they must replace the wealth and they must face retaliation for the souls that they took, unless blood money is accepted from them or they are pardoned, as all of this is allowed due to Allāh's statement:

﴿إِلَّا الَّذِينَ تَابُوا مِن قَبْلِ أَن تَقْرَأُوا عَلَيْهِمْ فَاعْلَمُوا أَنَّهُ عَفْوٌ رَّحِيمٌ﴾

﴿Except for those who (having fled away and then) came back (as Muslims) with repentance before they fall into your power; in that case, know that Allāh is Oft-Forgiving, Most Merciful.﴾ (5:34)

There is also nothing wrong with the Imam paying the blood money on their behalf, or paying what they owe for the wealth they took if they do not have it in their possession, nor in their places of storage.

## The People of Transgression

### Definition

The people of transgression are a group who have power and strength who break away from the Imam by a permissible and understandable interpretation, for instance, thinking that the Imam is a disbeliever, or due to his injustice and oppression. Hence, they band together, refuse to obey him and break away from him.

### Ruling

1. The Imam should try to correspond with them, and they should be asked about what has caused them to have vengeance against him, and why they broke away from him. If they mention oppression against them or others besides them, the Imam should stop such oppression. If they claim some doubtful matter from the doubtful issues, the Imam should clear it up for them and explain the true situation to them, and he should mention the evidence for those things. Then, if they submit to the truth, their submission should be accepted. However, if they refuse, they should be fought against as an obligation upon all of the Muslims. This is due to the statement of Allāh the Almighty:

﴿وَلِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلَحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَفْتِنَا  
الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ﴾

*﴿And if two groups of the believers fall to fighting, then make peace between them both. But if one of them outrages against the other, then fight you (all) against the one that which outrages till it complies with the Command of Allāh.﴾ (49:9)*

2. They should not be fought in a way that will wipe them out completely, like bombing them with jet planes or destructive defense mechanisms. They should only be fought with what will break their power and compel them to surrender.



3. It is not permissible to kill their children or their women, or to destroy their sources of wealth.

4. It is not permissible to finish off their wounded. It is also not permissible to kill their captives or those of them who are running and fleeing. This is due to the statement of 'Ali, may Allāh be pleased with him, on the Day of the Camel, "Do not kill a man who is fleeing, nor finish off a man who is wounded. And whoever locks his door, then he is safe." (Sa'īd bin Mansur reported it, and Ibn Abi Shaybah, Al-Hakim and Al-Baihaqi all reported a narration with the same meaning.)

5. If the war ends and they are defeated, they are not to be retaliated against and nothing is sought from them except repentance and returning to the truth. This is due to Allāh the Almighty's statement:

﴿فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ﴾

﴿So if it complies, then make reconciliation between them justly, and be equitable. Verily, Allāh loves those who are the equitable.﴾ (49:9)

#### **Note:**

If two groups of Muslims fight for party factionalism, or wealth, or position of power, without any (valid) interpretation, then they are both considered wrongdoers. Thus, each of these groups is held responsible for what it destroyed of life and wealth of the other.

### **An Explanation of Who is to be Killed as a *Hadd* Punishment**

#### **The Apostate**

##### **Definition**

The apostate is someone who leaves the religion of Islam for another religion, such as Christianity or Judaism, for

example, or for something that is not a religion, like atheism or communism. One is considered an apostate if he does this while being sane, and of his own free-will, without being forced.

### Ruling

The ruling of the apostate is that he is invited for three days to return to Islam and he is encouraged intensely to do so. If he returns to Islam, he will be left alone, and if not, he is killed with the sword as a *Hadd* punishment. This is due to the Prophet's statement:

«مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ»

«Whoever changes his religion (away from Islam), then kill him.» (Al-Bukhari)

And his statement:

«لَا يَجِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِأَحَدٍ ثَلَاثٍ: الثَّيْبُ الزَّانِي، وَالنَّفْسُ بِالنَّفْسِ، وَالتَّارِكُ لِدِينِهِ الْمَفَارِقُ لِلْجَمَاعَةِ»

«The blood of a Muslim man is not lawful except for one of three (cases): The person who commits Zina after being married, a life for a life (i.e. retaliation for murder) and the person who abandons his religion and breaks away from the group (i.e. Muslim community).» (Al-Bukhari and Muslim)

### The Ruling After He is Killed

If the apostate is killed, he is not washed, prayed over or buried in the cemeteries of the Muslims. He is not inherited from and whatever he left of wealth is considered spoils for the Muslims that are used for the general benefit of the Muslim nation. This is due to Allāh the Almighty's statement:

«وَلَا تُصَلِّ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا وَلَا تَقُمْ عَلَى قَبْرِهِ إِنَّهُمْ كَفَرُوا بِاللَّهِ وَرَسُولِهِ وَمَاتُوا وَهُمْ فَسِقُونَ»

«And never pray (funeral prayer) for any of them (hypocrites) who dies, nor stand at his grave. Certainly they disbelieved in

*Allāh and His Messenger, and died while they were Fasiqun (rebellious against Allāh and Messenger). ﴿٩:٨٤﴾*

And the statement of the Messenger ﷺ:

«لَا يَرِثُ الْكَافِرُ الْمُسْلِمَ، وَلَا الْمُسْلِمُ الْكَافِرَ»

«The disbeliever does not inherit from the Muslim and the Muslim does not inherit from the disbeliever.» (Al-Bukhari and Muslim)

And indeed the Muslims have unanimously agreed to what we have mentioned about the laws concerning the apostate.

### **Statements and Beliefs that Make one a Disbeliever**

Everyone who reviles Allāh the Almighty, or reviles a Messenger from His Messengers or an angel from His angels, then verily he has disbelieved.

Everyone who rejects the Lordship (*Rububiyyah*) or the Divinity (*Uluhiyyah*) of Allāh the Almighty, or His sending a Messenger from the Messengers, or claims that a Prophet will come after the finality of the Prophets, our leader Muhammad ﷺ, then he has disbelieved.

Everyone who denies an obligation from the obligations of the agreed upon Islamic Law, such as the prayer (*As-Salah*) or obligatory charity (*Az-Zakah*) or fasting (*As-Siyam*) or pilgrimage to Makkah (*Al-Hajj*) or kind treatment of parents, or *Jihad*, for example, then he has disbelieved.

Everyone who makes something lawful (*Halal*) that is agreed upon as being forbidden (*Haram*) and known by necessity from the Islamic Law, like illegal sex (*Az-Zina*) or drinking (or taking) intoxicants (*Al-Khamr*) or stealing, or committing murder, or dealing with magic, for example, then he has disbelieved.

Everyone who denies a chapter (*Surah*) from the Book of Allāh (the Qur'an) or a verse from it, or a letter, then verily he has disbelieved.

Everyone who denies an Attribute from the Attributes of Allāh the Almighty, like His being Alive, All-Knowing, All-Hearing, All-Seeing and Most Merciful, then verily he has disbelieved.

Everyone who openly makes light of the religion (Islam) regarding its obligations or its recommended acts, or he mocks these things or despises it (Islam) or he throws the Qur'an into an unclean place, or steps on it with his foot in order to disgrace it and show hatred towards it, then he has disbelieved.

Everyone who believes that there will be no Resurrection or that there will be no torment or pleasures on the Day of Resurrection, or that the torment and the pleasure are only figurative (i.e. not real), then he has disbelieved.

Everyone who says that the righteous people (*Awliya*) are better than the Prophets or that some of the righteous people are not obligated to worship (Allāh), then he has disbelieved.

The evidence for all of this is the general consensus of all the Muslims as well as the statement of Allāh the Almighty:

﴿قُلْ أَطِيعُوا اللَّهَ وَأَطِيعُوا رَسُولَهُ. كُنتُمْ تَسْتَهْزِئُونَ ﴿٦٥﴾ لَا تَعْتَذِرُوا قَدْ كَفَرْتُمْ بَعْدَ إِيمَانِكُمْ﴾

﴿Say: 'Was it at Allāh and His Ayat and His Messenger that you were mocking? Make no excuse; you disbelieved after you had believed.'﴾ (9:65-66)

For verily this verse proves that everyone who shows open mockery of Allāh or His Attributes or His Law (*Shari'ah*) or His Messengers, then he has disbelieved.

### **The Ruling of Whoever Disbelieves by Committing any of What has been Mentioned**

The ruling concerning whoever disbelieves by committing any of what has been mentioned is that he is requested for three (days) to repent. If he repents from his statement or

his belief he is left alone, and if not, he is killed as a *Hadd* punishment, and his ruling after his death is the same ruling as the apostate.

The people of knowledge have made an exception from this rule for whoever curses Allāh the Almighty, or His Messenger ﷺ. For such a person is killed immediately and his repentance is not accepted.<sup>[1]</sup>

Some of the people of knowledge hold the view that the person who curses Allāh and His Messenger ﷺ, is encouraged to repent and his repentance is accepted. So he testifies that there is none worthy of being worshipped except Allāh and Muhammad is His servant and Messenger, he seeks Allāh's forgiveness and he repents to Him.

#### **Note:**

Whoever says a statement of disbelief under compulsion, either while being beaten or threatened, yet his heart is settled upon belief (*Al-Iman*), then there is nothing upon him (i.e. of sin or expiation). This is due to Allāh the Almighty's statement:

﴿إِلَّا مَن أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ وَلَكِن مَّن شَرَحَ بِالْكُفْرِ صَدْرًا﴾

﴿except whoever is forced thereto and whose heart is at rest with Faith; but such as open their breast to disbelief﴾ (16:106)

### **Az-Zindiq**

#### **Definition**

*Az-Zindiq* is the person who openly professes Islam, yet he

<sup>[1]</sup> The *Fiqh* scholars of the Maliki School of Law are the ones who hold the opinion that whoever curses the Prophets is killed and his repentance is not sought. Their proof is that Abu Dawud and An-Nasa'i reported that a blind man had a mother who cursed the Messenger of Allāh ﷺ so he killed her. The Messenger of Allāh ﷺ was informed about this and he considered her blood as lawfully wasted.

hides disbelief (*Kufr*). This is like the person who denies the Resurrection or rejects the sending of our Prophet Muhammad ﷺ or he does not believe that the Qur'an is the Words of Allāh. However, he is not able to openly profess these things or make it clear that he holds such beliefs due to his fear or his weakness.

### **Ruling**

The ruling for the case of the *Zindiq* is that when he is exposed and his situation is known, he is killed as a *Hadd* punishment. It has been said that he is encouraged to repent, and this is better and more preferred. So if he repents, he is left alone, and if he does not, he is killed. His ruling after his death is the same as the ruling of the apostate. This means that he is not washed nor is he prayed over.

## **The Magician**

### **Definition**

The magician is the one who practices magic and deals with it.

### **Ruling**

The ruling of the magician is that what he does is considered. If that which he does or that which he says is something that makes him a disbeliever, then he is killed. This is due to the statement of the Prophet ﷺ:

«حَدَّثَ السَّاحِرَ ضَرْبَهُ بِالسَّيْفِ»

«The *Hadd* for the magician is striking with the sword.»<sup>[1]</sup>

[1] At-Tirmithi and Ad-Daraqutni as a statement of the Prophet ﷺ and a statement of a Companion. The version that is a statement of a Companion is authentic and the version that is attributed to the Prophet ﷺ is weak. Malik, Ash-Shafi'i, Ahmad and many of those who were before them of the Companions and their students acted according to this.

If that which he does or says is not something that makes him a disbeliever, he is punished and encouraged to repent. If he repents, he is left alone, and if not, he is killed, because he has not left a deed or statement (i.e. magic) which in itself makes him a disbeliever, due to the generality of Allāh the Almighty's statement:

﴿وَمَا يُلِيمَانِ مِنْ أَحَدٍ حَتَّى يَقُولَا إِنَّمَا نَحْنُ فِتْنَةٌ فَلَا تَكْفُرْ﴾

﴿And they did not teach anyone (such things i.e., magic) till they had said, 'We are only for trial, so disbelieve not (by learning this magic)'.﴾ (2:102)

And His statement:

﴿وَلَقَدْ عَلِمُوا لَمَنِ اشْتَرَاهُ مَا لَهُ فِي الْآخِرَةِ مِنْ خَلَقٍ﴾

﴿And verily they knew that the buyers of it (magic) would have no share in the Hereafter.﴾ (2:102)

## The Person Who Abandons the Prayer (As-Salah)

### Definition

The person who abandons the prayer (As-Salah) refers to a Muslim who abandons the five prayers, either due to laxity concerning them or denial of them (i.e. their obligation).

### Ruling

The ruling of the person who abandons the prayer is that he is commanded to perform them, and he is repeatedly commanded to do so. He is given respite until there is only enough time left to perform one *Rak'ah* of the prayer. If he prays, he is left alone, and if not, he is killed as a *Hadd* punishment. This is due to the statement of Allāh the Almighty:

﴿إِن تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخِوُنْكُمْ فِي الدِّينِ﴾

﴿So if they repent and establish the Salah and give the Zakah, then they are your brethren in religion.﴾ (9:11)

And the statement of the Messenger ﷺ:

«أَمِرْتُ أَنْ أَقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّ الْإِسْلَامِ»

*«I have been commanded to fight the people until they testify that there is none worthy of being worshipped but Allāh and Muhammad is the Messenger of Allāh, and they establish the Salah and pay Zakah. So if they do that, they make their blood and their wealth safe from me, except by the right of Islam.»*  
(Al-Bukhari and Muslim)

### Important Notes:

- Delaying the (punishment of the) one who abandons the prayer until there is only enough time left of the prayer to perform one *Rak'ah* of it, and then if he still refuses to pray, killing him as a *Hadd* punishment, is the view of Malik. Giving him respite for three days is the view of Ahmad.
- Whoever apostates due to his rejection of something that is well-known by necessity from the religion (Islam), his repentance is not accepted if he repents, unless he affirms that which he was rejecting, as well as pronouncing the two testimonies of faith and seeking forgiveness from his sin.
- The meaning of the word *Hadd* in our saying about the apostate, the *Zindiq* and the magician, "he is killed as a *Hadd* punishment," is that it is the legislated punishment. This is like the Prophet's statement:

«حَدَّ السَّاحِرِ ضَرْبُهُ بِالسَّيْفِ»

*«The Hadd punishment of the magician is striking with the sword.»*

This means that he is killed according to Islamic Legislation for his criminal offense, which is apostasy or heresy (*Az-Zandaqah*) or magic. For all of these things are disbelief. And whoever dies as a disbeliever, as we have already



explained, Muslims do not inherit from him, he is not prayed over (for funeral prayer) and he is not buried in the cemeteries of the Muslims.

## **At-Ta'zir**

### **Its Definition**

*At-Ta'zir* is to discipline by beating, scolding, shunning, or expelling.

### **Its Ruling**

*At-Ta'zir* is obligatory for every sin for which Islamic Legislation has not stipulated a *Hadd* or an expiation. This is like stealing something that does not reach the minimum required value for cutting off the hand, or touching a strange woman (i.e. one who is not a relative) or kissing her. It could also be cursing a Muslim without using words that imply accusation of illegal sex (*Al-Qadhf*) or beating him without wounding him or breaking a limb, for example.

### **Its Regulations**

The laws of *At-Ta'zir* are as follows:

1. If it is beating, it may not be more than ten lashes with a whip. This is due to the Messenger's statement:

«لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشْرَةِ أَسْوَاطٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى»

«No one is to be given more than ten lashes, except a punishment from the punishments of Allāh the Almighty.» (Al-Bukhari and Muslim)

2. That the ruler makes *Ijtihad* in applying *At-Ta'zir* and he does what is appropriate for each situation. If scolding is sufficient to prevent the offender or discipline him, then he is only scolded. If the offender is imprisoned for a day and a night, then that is sufficient, with no need to imprison him longer than that. If a light fine that will deter him (from repeating his crime), then this is suitable with no

need to fine him heavily, and so forth. This is because the goal of *At-Ta'zir* is educating, refining and disciplining, not tormenting and vengeance. The Prophet ﷺ disciplined Abu Dharr with his saying,

«إِنَّكَ امْرُؤٌ فِيكَ جَاهِلِيَّةٌ»

«Verily you are a man who has *Jahiliyyah* (ignorance) with him.» (Al-Bukhari)

And he ﷺ said:

«قُولُوا لِمَنْ بَاعَ وَاشْتَرَى فِي الْمَسْجِدِ: لَا أَرْزَحِ اللَّهَ تِجَارَتَكَ»

«Say to whoever sells or buys in the *Masjid*, 'May Allāh not make your business successful.'» (At-Tirmithi)

And for whoever calls out (in search of) a lost object in the *Masjid*:

«لَا رَدَّ اللَّهُ عَلَيْكَ فَإِنَّ الْمَسَاجِدَ لَمْ تُبْنَ لِهَذَا»

«May Allāh not return it to you, for verily the *Masjids* were not built for this.» (Muslim)

Likewise, he ﷺ ordered that the three men who stayed behind from *Jihad* without an excuse be shunned and he held that to be sufficient (as a punishment) for them. (In the *Sahih*) He also ordered that the hermaphrodites be expelled from Al-Madinah and he held a man prisoner for a day and a night regarding an accusation.<sup>[1]</sup> He also doubled the fine on a man who took a bunch of dates that were still on the date trees.<sup>[2]</sup> There are other examples as well of the different types of *At-Ta'zir* that have been confirmed from him ﷺ and that which was intended to discipline and refine the Muslim.

[1] Ahmad, Abu Dawud and At-Tirmithi, who graded it *Hasan*, and Al-Hakim, who graded it *Sahih*.

[2] At-Tirmithi, who graded it *Hasan*, and Al-Hakim, who graded it *Sahih*.

## Laws of Judgement and Testimonies

### Judgement

#### Its Definition

Judgement is clarifying the Legislative Laws and carrying them out.

#### It Ruling

Judgement is from the obligations upon the society (or community) as a whole. Thus, it is obligatory upon the Imam to appoint for every land from the lands of his jurisdiction, a judge who is deputized by him to clarify Legislative Islamic Laws and make the citizens adhere to them. This is due to the Prophet's statement:

«لَا يَجْلُ لثَلَاثَةٍ يَكُونُونَ فِي فَلَاةٍ مِنَ الْأَرْضِ إِلَّا أَمَّرُوا عَلَيْهِمْ أَحَدَهُمْ»

*«It is not permissible for three (people) who are in a desolate area of the land to not appoint one of them as the 'Amir (leader, commander) over them.»<sup>[1]</sup>*

#### The Danger of the Position of Judgement

The position of judgement is one of the most dangerous positions and of the greatest of them in status. This is because it is representation of Allāh the Almighty, and succeeding his Messenger ﷺ. For this reason, the Messenger of Allāh ﷺ gave warning concerning it and drew attention to its danger in his statement,

<sup>[1]</sup> Ahmad, and it has supporting narrations and witnesses that necessitate its authenticity.

«مَنْ جُعِلَ قَاضِيًا بَيْنَ النَّاسِ فَقَدْ ذُبِحَ بِغَيْرِ سِكِّينٍ»

«Whoever is made a judge between people, then he is slaughtered without a knife.» (At-Tirmithi and he graded it *Sahih*)

And he ﷺ said:

«الْقَضَاءُ ثَلَاثَةٌ: وَاحِدٌ فِي الْجَنَّةِ، وَاثْنَانِ فِي النَّارِ، فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ وَقَضَى بِهِ، وَرَجُلٌ عَرَفَ الْحَقَّ وَجَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ، وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلِ فَهُوَ فِي النَّارِ»

«The judges are three: One is in Paradise, and two are in the Hell-fire. In reference to the one who is in Paradise, he is a man who knows the truth and judges according to it. The man who knows the truth and he is unjust in his ruling, then he will be in the Hell-fire. The man who gives judgements for the people based upon ignorance, then he is in the Hell-fire.»<sup>[1]</sup>

And he ﷺ said to 'Abdur-Rahman,

«يَا عَبْدَ الرَّحْمَنِ بْنَ سَمُرَةَ لَا تَسْأَلِ الْإِمَارَةَ، فَإِنَّكَ إِنْ أُعْطِيَتْهَا مِنْ غَيْرِ مَسْأَلَةٍ أَعِنْتُ عَلَيْهَا، وَإِنْ أُعْطِيَتْهَا عَنْ مَسْأَلَةٍ وَكُنْتُ إِلَيْهَا»

«O 'Abdur-Rahman bin Samurah! Do not ask for leadership. For verily, if you are given it without asking for it, you will be aided in it (i.e. by Allāh), and if you are given it by asking for it you will be entrusted to it.» (Al-Bukhari and Muslim)

And his statement:

«إِنَّكُمْ سَتَخْرِصُونَ عَلَى الْإِمَارَةِ وَسَتَكُونُ نَدَامَةً يَوْمَ الْقِيَامَةِ، فَنِعَمَ الْمُرْضِعَةُ، وَبِئْسَتِ الْفَاطِمَةُ»

«They will seek leadership and it will be a source of sorrow on the Day of Resurrection. For what an excellent breast-feeder and what an evil weaning.» (Al-Bukhari)

<sup>[1]</sup> Abu Dawud, Ibn Majah, At-Tirmithi, and Al-Hakim, who graded it *Sahih*.

## The Position of Judgement Should not be Given to One who Seeks it

The position of judgement should not be given to a man who seeks it or a man who longs to attain it. This is because the position of judgement is a heavy responsibility and a great trust. No one would seek it except for someone who thinks lightly of its condition, or belittles its right. Such a person would not be safe from behaving treacherously in such a position and abusing it. This will lead to corruption in the religion, in the land and among the servants (i.e. people), which cannot be allowed nor tolerated. For this reason, the Messenger of Allāh ﷺ said:

«إِنَّا وَاللَّهِ لَا نُؤَلِّي هَذَا الْعَمَلَ أَحَدًا يَسْأَلُهُ، أَوْ أَحَدًا يَخْرِصُ عَلَيْهِ»

*«By Allāh, verily we do not entrust this job to anyone who asks for it or anyone who desires it.»* (Al-Bukhari and Muslim)

And he ﷺ said:

«إِنَّا لَنْ نَسْتَعْمِلَ عَلَى عَمَلِنَا مَنْ أَرَادَهُ»

*«Verily we do not hire for our job the person who desires it.»* (Al-Bukhari and Muslim)

## Conditions of Hiring for Judgement

The job of judgement is not given except to someone who has all of the following characteristics: Islam (i.e. he is a Muslim), intelligence (i.e. sanity), maturity (i.e. puberty), freedom (i.e. he's not a slave), knowledge of the Book and the Sunnah, awareness of what he is ruling concerning, righteousness (that he is not a sinful person) and that he can hear, see and speak.<sup>[1]</sup>

[1] Having sight is not a mandatory condition of being a judge as it has nothing to do with the duty of giving judgement.

## Etiquettes of the Judge

It is obligatory for the one who is appointed as a judge to adhere to the following etiquette: That he be firm without being harsh and gentle without being weak, so that the wrongdoer will have no hope of fooling him and the one who has a right will not fear him. He should be forbearing without allowing himself to be humiliated. This is so that the people who behave ignorantly in disputing will not behave boldly with him. He should be concerned and deliberate, and not procrastinating or negligent. He should be smart and wise, without being pompous or belittling others.

His court should be in the center of the land, and it should be large enough to contain all the litigants, and it should not be too small to allow witnesses.

He should be just between the litigants in his perception, his consideration, his gathering place and in allowing them to come to him (in private). He should not prefer one of the litigants to the other in any of these things. The *Fiqh* scholars should be present with him in his gathering place as well as the people with knowledge of the Book and the Sunnah. He should consult them in those cases that are difficult for him.

## What Should the Judge Avoid?

There are many matters that the judge should avoid and stay away from. They are the following:

1. That he gives a judgement while he is angry or feeling some effects of an illness, hunger, thirst, heat, cold, weariness, or laziness. This is due to the Prophet's statement:

«لَا يُقْضَىٰ بَيْنَ حَاكِمٍ بَيْنَ اثْنَيْنِ وَهُوَ غَضَبَانُ»

«A judge should not give a ruling between two people while he is angry.» (Al-Bukhari and Muslim)

2. That he gives a judgement without the presence of witnesses.
3. That he gives a judgment regarding himself or someone else in whose case or behalf of whom his witness is not acceptable, such as the son, the father or the wife.
4. That he accepts bribery for a judgement. This is due to the Prophet's statement:

«لَعْنَةُ اللَّهِ عَلَى الرَّائِي وَالْمُرْتَبِي فِي الْحُكْمِ»

«The curse of Allāh is upon the one who pays a bribe and the one who accepts a bribe in ruling.» (Ahmad, Abu Dawud and At-Tirmithi, who graded it *Sahih*)

5. That he accepts a gift from one whom he did not previously exchange gifts with before he was given the position of judge. This is due to the Prophet's statement:

«مَنْ اسْتَعْمَلَنَاهُ عَلَى عَمَلٍ فَرَزَقْنَاهُ رِزْقًا فَمَا أَخَذَهُ بَعْدَ ذَلِكَ فَهُوَ غُلُولٌ»

«Whoever we hire for a job and we give him provision (i.e. salary), then whatever he takes after (i.e. other than) that is stolen wealth.»<sup>[1]</sup>

## The Duty of the Judge

The duty of the judge includes the following:

[1] Abu Dawud and Al-Hakim and there is some weakness in its chain of narration. However, it has a supporting witness in Muslim with the wording,

«مَنْ اسْتَعْمَلَنَاهُ مِنْكُمْ عَلَى عَمَلٍ فَكْتَمْنَا مَخِيطًا فَمَا قُوَّةُ كَانَ ذَلِكَ غُلُولًا يَأْتِي يَوْمَ الْقِيَامَةِ»

«Whoever we hire from among you for a job, and he conceals a stitched garment or anything more than it from us, then that will be considered stolen property that will come on the Day of Resurrection.»

1. Distinguishing between the litigants in all of the claims and issues, with effective judgements or agreements that are acceptable to both parties when there are conflicting evidences or concealed proofs or weak proofs.
2. Subduing the wrongdoers and liars, helping the people of truth and those who have been wronged, and giving the right to those who deserve it.
3. Establishing the punishments and judgements for murders and injuries.
4. Looking into cases of marriage, divorce, spending (for maintenance) and other related things.
5. Looking into cases dealing with the wealth of those who are not responsible, such as orphans, the insane, the absent and one who is legally incompetent.
6. Looking into the public welfare in the land, such as the roads and the public utilities and other things.
7. Commanding the good and obligating the people to act according to it, and forbidding the evil, changing it and removing its effects from the lands.
8. Leading the Friday prayer and the 'Eid prayers.

### **Upon What Does the Judge Rule?**

The tools of judgement that help the judge in giving the rights to those who deserve them are four:

#### **1. Confession**

This is when the accused accepts that which he is charged with. This is due to the Prophet's statement:

«إِنْ اعْتَرَفَتْ فَارْجُمَهَا»

«And if she confesses, then stone her.» (Al-Bukhari and Muslim)

#### **2. Evidence**

This means witnesses. This is due to the Prophet's



statement:

«الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ»

«The evidence must be brought forth by the accuser and it is upon the defendant who denies (the charge) to swear an oath.»

(Al-Bayhaqi with a Sahih chain of narration)

And his statement:

«شَاهِدَاكَ أَوْ يَمِينُهُ»

«Either your two witness or his oath.» (Muslim)

The least amount of (required) witnesses is two. If two witnesses are not available, then one witness and the swearing of an oath are required. This is due to the statement of Ibn ‘Abbas, may Allāh be pleased with him, “Verily the Prophet ﷺ ruled that an oath and a witness (must be presented).” (Muslim)

### 3. The Oath

This is due to the Prophet’s statement:

«الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ»

«The evidence must be brought forth by the accuser and it is upon the defendant who denies (the charge) to swear an oath.»

If the accuser is not able to produce any evidence, the accused swears a single oath (that the accusation is false) and thus he makes himself innocent of the charge.

### 4. Declining

This is when the accused declines to swear to an oath. Thus, the judge offers him an excuse by saying to him, “If you swear, I will let you go, and if you do not swear, I will pass judgement against you.” So if he still refuses (to swear) the judge passes judgement against him. However, Malik held the view that in the situation of (the accused) declining the oath, the oath then goes to the accuser. If he

swears (that he is truthful in his claim), the judgement is issued in his favor. His (Malik's) proof is that the Prophet ﷺ returned the (obligation of swearing an) oath to the accuser in the situation of *Al-Qasamah*.<sup>[1]</sup> This is safer for judgement and better for relieving the (judge of) responsibility.

## How Judgement is Performed and its Method

When the two litigants are present the judge makes them sit down in front of him.<sup>[2]</sup> Then he says, "Which of you is the accuser?" And if he remains silent until one of them begins to present his claim, there is no harm in that. So when the accuser finishes presenting his claim, without any presentation of evidence, he (the judge) says to the accused, "What do you say about this accusation?" If he affirms it (i.e. confesses), the judge passes judgement in favor of the accuser. If the accused denies the accusation, the judge says to the accuser, "What is your proof?" If he (the accuser) brings his proof, the judge rules in his favor according to his proof. If he requests a period of time to present his proof, he is given a designated time in which he is able to present his proof or witness. If he does not present any proof, the judge says to the accused, "You must take an oath." If the accused swears (an oath) then he is let go (as innocent). If he declines to swear, the judge offers him an excuse by telling him that if he swears, the judgement will not be passed against him, and if he declines, the judgement will be passed against him. However, it is good if he returns the obligation of taking an oath to the accuser. If the accuser swears an oath (after the declining of the accused), judgement is passed in his favor.

[1] Swearing an oath when there is no proof for who killed the victim in a murder case.

[2] This is based upon what Abu Dawud recorded, that 'Abdullah bin Az-Zubayr said, "The Messenger of Allāh ﷺ ruled that the two disputants be made to sit down in front of the judge."

This is due to what Muslim recorded in his *Sahih* from Wa'il bin Hujr, may Allāh be pleased with him, that two men came to the Prophet ﷺ disputing. One was from Hadhramawt and the other was a Kindi. So the one from Hadhramawt said, "O Messenger of Allāh! Verily this man has taken some land of mine from me." The Kindi said, "It is my land, and it is in my possession and he has no right to it." So the Prophet ﷺ said to the one from Hadhramawt:

«أَلَمْ يَكُنْ؟»

«Do you have any proof?»

He replied, "No." Then he ﷺ said (to the Kindi):

«فَلَمْ يَمِينْ»

«Then the oath is for you.»

So he (the Hadhrami) said, "O Messenger of Allāh! The man who is a transgressor has no concern for what he swears about and he will not refrain from (doing) anything." He ﷺ said:

«لَيْسَ لَكَ مِنْهُ إِلَّا ذَلِكَ»

«There is nothing (due) to you from him except for that.»

### Important Notes:

1. If the judge knows the righteousness of the witness, he rules according to it - meaning his testimony.
2. If a woman conceals herself from men is accused of something, and she will not appear before them in order to avoid speaking with them, and she will not present herself in the courts, then she is not required to be present. It is sufficient for her to entrust her affairs to someone who will represent her in the presence of the accusation.
3. The judge should not pass judgement according to what he knows, but rather according to the evidence. This is so that he will not be criticized for his justness and his fairness. This is due to the statement of Abu Bakr As-

Siddiq, may Allāh be pleased with him, "If I saw a man committing a (crime of) *Hadd* from the punishments of Allāh, I would not seize him, nor would I call out to anyone for him, until someone else was with me."<sup>[1]</sup>

4. If someone is accused, it is obligatory for him to be present, and no judgement should be given in his absence, unless he entrusts a representative to be present in his place. If he is absent, he is summoned and his presence is requested or someone is entrusted to represent him.

5. The writing of a judge to another judge is accepted in cases other than those that involve the *Hudood* punishments, if he calls two witnesses concerning it.

6. An accusation not clearly rendered is not regarded. For example, if he says, "So-and-so owes me something" or "I think that he owes me such and such," His claim is not considered until he names the thing (that he is claiming) and is certain about what he is claiming against the accused.

7. The judgement of the judge according to what is apparent does not make something that is unlawful lawful in the same matter, nor does it make something that is lawful unlawful. This is due to the statement of the Prophet ﷺ:

«إِنَّمَا أَنَا بَشَرٌ، وَإِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ، وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ الْحَنُّ بِحُجَّتِهِ مِنْ بَعْضٍ، فَأَقْضِي بِنَحْوِ مِمَّا أَسْمَعُ، فَمَنْ قَضَيْتُ لَهُ مِنْ حَقِّ أَخِيهِ شَيْئًا فَلَا يَأْخُذْهُ، فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنْ نَارٍ»

[1] Ahmad. Regarding this matter there is a difference of opinion among the people of knowledge. Some have said that it is permissible for the judge to rule according to what he knows, and some have prevented it. What seems to be closest to the truth, and Allāh knows best, is that the judge should not rule according to what he knows, unless his knowledge is absolute and certain, and he does not fear any blame that he ruled according to his desires and without evidence.

*«I am only a man and verily you come to me with disputes. And it may be that one of you is more eloquent in presenting his argument than another, so I pass judgement according to what I hear. So whomever I passed judgement in favor of, giving him something from the right of his brother, then he should not take it. For verily I have only cut a piece of the Hell-fire for him.»* (Al-Bukhari and Muslim)

8. If two proofs are contradictory and there is no preference for one of them over the other, then the claim is divided between the two litigants, as the Messenger ﷺ gave such a judgement.<sup>[1]</sup>

## The Testimonies

### The Definition of Testimony

A testimony is that a truthful man informs of what he saw or heard.

### Its Ruling

Assuming the responsibility of testifying, just like offering the testimony itself, is a social obligation upon whomever must do it. This is due to Allāh the Almighty's statement:

﴿وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ﴾

﴿So get two witnesses out of your own men. And if there are not two men (available), then a man and two women.﴾ (2:282)

And His statement:

﴿وَلَا تَكُونُوا الَّذِينَ هَدَىٰ أَلَمًا لِّمَنْ هَدَىٰ ثُمَّ يَأْتِيهِمْ أَفْئَاتُهُمْ﴾

﴿And do not conceal the evidence, for he who hides it, his heart is sinful.﴾ (2:283)

[1] Abu Dawud, Al-Bahyaqi and Al-Hakim all recorded that two men claimed a camel in the time of the Messenger of Allāh ﷺ, and each of them brought forth two witnesses. So the Prophet ﷺ divided it (i.e. its ownership) between them in two halves.

And the statement of the Messenger ﷺ:

«أَلَا أُخْبِرُكُمْ بِخَيْرِ الشُّهَدَاءِ الَّذِي يَأْتِي بِشَهَادَتِهِ قَبْلَ أَنْ يُسْأَلَهَا»

*«Shall I not inform you of the best of the witnesses. It is the person who brings forth his testimony before he is asked for it.»*

(Muslim)

## The Conditions of the Witness

The conditions regarding the witness are that he must be a Muslim, who is sane, mature, fair and not criticized. The meaning of "criticized" is that he is among those whose testimony is not accepted, such as his being a direct relative of one of them (the litigants), or a spouse testifying on behalf of his (or her) spouse, or the testimony of the person who may gain some benefit for himself, or avert some harm for himself, or the witness of an enemy against his enemy. This is due to the Prophet's statement:

«لَا تَجُوزُ شَهَادَةُ خَائِنٍ وَلَا خَائِنَةٍ، وَلَا ذِي غَمْرٍ عَلَى أَخِيهِ، وَلَا تَجُوزُ شَهَادَةُ الْقَانِعِ لِأَهْلِ الْبَيْتِ»

*«The testimony of the treacherous man or woman is not permissible, nor the person who has a grudge of enmity against his brother, and the testimony of the Qani<sup>[1]</sup> for the people of the family.»<sup>[2]</sup>*

## The Laws of Testimony

1. It is not permissible for the witness to testify to anything except what he knows with certainty due to seeing it or hearing it. This is due to the Prophet's statement to the one who asked him about the testimony:

[1] The *Qani* is the servant or the man whom a family spends upon. His testimony is not acceptable due to the existence of a reason for him loving them in way that will make him lenient towards them.

[2] Ahmad, Abu Dawud and Al-Bayhaqi. In *At-Talkhis*, Ibn Hajar said, "Its chain of narration is strong."

«تَرَى الشَّمْسَ؟»

«Do you see the sun?»

The man replied, "Yes." He (the Prophet ﷺ) then said:

«عَلَى مِثْلِهَا فَاشْهَدْ، أَوْ دَعْ»

«So testify like this or leave it (i.e. do not testify).»<sup>[1]</sup>

2. The testimony on behalf of another witness is allowed if the other witness cannot be present due to illness, absence or death, or due to any necessity if the judge's ruling will depend upon his testimony (i.e., the absent witness can propose other witnesses that he knows have full knowledge about the matter).

3. The witness should provide a recommendation by the testimony of two just people. They must affirm that he is a just and righteous person if the witness himself is not already known to be righteous. As for the person who is already known to be a righteous figure, then the judge does not need to have a testimony of recommendation for him.

4. If two men give a recommendation for a man (to be a witness) and two other men make disparaging remarks about him, the rejection of his validity is given precedence over his recommendation, because it is safer.

5. It is obligatory to discipline the person who gives a false testimony with what will prevent him and be a lesson for whoever considers doing this.

## The Types of Testimonies

1. The testimony for *Zina*. This testimony specifically requires four witnesses. This is due to Allāh, the Almighty's statement,

[1] Ibn 'Adiy with a weak chain of narration. Al-Hakim declared it *Sahih*, but he was mistaken in his grading it so.

﴿فَأَسْتَشْهِدُوا عَلَيْهِمْ أَرْبَعَةً مِنْكُمْ﴾

﴿So take the evidences of four witnesses from amongst you against them.﴾ (4:15)

Therefore, nothing less than four witnesses suffice regarding Zina.

2. The testimony for all matters other than Zina only requires two just witnesses.

3. The testimony of wealth. The testimony of a man and two women suffices regarding wealth. This is due to Allāh the Almighty's statement:

﴿إِنْ لَمْ يَكُنْ رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ﴾

﴿So if there are not men (available), then a man and two women ﴾ (2:282)

4. The testimony regarding laws only requires one witness and an oath. This is due to the statement of Ibn 'Abbas, may Allāh be pleased with him, "The Messenger of Allāh ﷺ judged with an oath and a witness." (See earlier)

5. The testimony of pregnancy, menstruation and that which only women know about. This only requires the testimony of two women.

## Confession

### Its Definition

Confession is when someone acknowledges that he is responsible for something that is due to someone else. This is like a person saying, "Verily I owe Zayd fifty thousand dirhams," or "Verily such and such possession belongs to so-and-so."

### From Whom Confession Accepted?

The confession is accepted from the sane, mature person. The confession of the insane person, the child and the



person who is forced is not accepted, as they are not held responsible. This is due to the Prophet's statement:

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ»

«The pen has been lifted from three.»<sup>[1]</sup> (See earlier)

And his saying:

«... وَمَا اسْتَكَرُّهُوا عَلَيْهِ»

«and what they have been forced to do.» (See earlier)

### Its Ruling

The ruling of confession is that it is binding. So whoever confesses something to a man while being sane, mature and having free will, he is bound to it (his confession). This is due to the Prophet's statement:

«... فَإِنْ اعْتَرَفَتْ فَأَرْجُمُهَا»

«and if she confesses, stone her.»

So the Messenger ﷺ made her confession binding upon her by implementing the punishment on her.

### Some of the Laws of Confession

Confession has laws. Among them are the following:

1. The confession of a bankrupt person or a legally incompetent person in matters of wealth is not binding, as the bankrupt person may be suspect of being jealous of the creditors. The confession of second person - the legally incompetent - is not accepted, because if his confession is accepted, it is as if he is not incompetent. If they give any confession, they are held responsible for it and they must settle it after the removal of the factor that prevented their confession.

[1] The confession of a child is valid if he is discerning and allowed to perform transactions. If the child is not discerning or he is one who is legally incompetent, then his confession is not valid.

2. The confession of the sick person who is on the verge of death is not accepted regarding something belonging to an heir (of his) except with proof. This is because he is suspect of showing favoritism. So if the sick person who is on the verge of death says, "I confess that I owe my son such and such," his confession is not accepted. This is due to fear that he may intend to give him preference over his other children. The statement of the Prophet ﷺ testifies to this:

«لَا وَصِيَّةَ لِرَآثٍ»

«There is no bequeathal for an heir.»

So the statement of the sick person, "Verily my son so-and-so should get such and such," in exclusion of the rest of his children, resembles a bequeathal of something to him. And the Messenger ﷺ said:

«لَا وَصِيَّةَ لِرَآثٍ»

«There is no bequeathal for an heir.»

Unless the (other) heirs allow that. His (the dying person's) confession is not accepted if no proof is established for what he claims belongs to his heir. If some proof is established (for what he claims), his confession is valid.

## **Ar-Riqq (The Slavery)**

### **Its Definition**

*Ar-Riqq* is ownership and slavery. The *Raqeeq* is the slave who is owned. It (the word *Raqeeq*) is derived from the word *Ar-Raqqah*, which is the opposite of harshness. This is because the slave is gentle and mild with his master. He does not treat him harshly by virtue of being owned by his master.

### **Its Ruling**

The ruling of slavery is that it is permissible. This is due to Allāh the Almighty's statement:

﴿وَمَا مَلَكَتْ أَيْمَانُكُمْ﴾

﴿And those whom your right hands possess.﴾ (4:36)

And the statement of the Messenger ﷺ:

«مَنْ لَطَمَ مَمْلُوكَهُ أَوْ ضَرَبَهُ فَكَفَّارَتُهُ أَنْ يُعْتِقَهُ»

«Whoever strikes his slave or beats him, his expiation is to free him.» (Muslim)

### **Its History and Its Origin**

Slavery has been known among humanity for thousands of years. It was found to exist among the most ancient people of the world, like the Egyptians, the Chinese, the Indians, the Greeks and the Romans. Slavery was also mentioned in the divinely revealed Books, like the Tawrah and the Injil. Hajar, the mother of Isma'il, the son of Ibrahim the Close Friend (of Allāh), was a slave girl that the King of Egypt gave as a gift to Sarah, the wife of Ibrahim. Then she (Sarah) gave her (Hajar) to her husband, Ibrahim, as a gift. So he took her as a concubine and she gave birth to a son

by him, who was Isma'il.

In reference to the origin of slavery, it may be traced to the following causes:

**1. War.** When a group of people would wage war against another group of people, and conquer them by force, they would take their women and children as captives.

**2. Poverty.** Many cases of poverty have led people to selling their children to people as slaves.

**3. Abduction by stealing and pirating.** Large groups from Europe used to come to Africa and seize African blacks and sell them in slave trade markets in Europe. Likewise, the pirates from the seafaring Europeans would attack the passing ships on the open sea and seize the people who were riding on them. So if they overpowered them, they would sell them in slave markets in Europe and consume (i.e. keep and use) their price.

Islam is the True Religion of Allāh and it has not allowed any of these reasons for slavery except one, which is taking slaves through war. This is a mercy for humans. For verily many victors are led by their victory to committing corrupt acts under the natural effect of longing for vengeance. Thus, they kill the women and children to take revenge against their men. Hence, Islam allowed its followers to take the women and children as slaves, firstly in order to preserve their lives, and secondly, to facilitate their happiness and their eventual liberation. In reference to the male warriors, the Imam is given the option of being beneficent to them (by freeing them) without payment of any ransom or ransoming them for wealth or weapons or men. Allāh the Almighty says:

﴿إِذَا لَقِيتُ الْكُفْرَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَغْلَسُوا نَفْسَهُمْ فَتَدَارَ الْوَقَاتِ فَإِنَّا مَتَاءٌ بِأَيْدِيهِمْ  
حَتَّىٰ تَضَعَ الْحَرْبُ أَرْزَامَهَا﴾

﴿So, when you meet (in war - Jihad in Allāh's cause) those who disbelieve, smite (their) necks till when you have killed

*and wounded many of them, then bind a bond firmly. Thereafter (is the time) either for generosity or ransom, until war lays down its burden.﴾ (47:4)*

## The Treatment of the Slave

The treatment of slaves did not differ greatly between nations, if we exclude the case of Islam. For verily the slave was considered to these nations as no more than an exploited tool that was used for everything and for all purposes. Along with this the slave would be starved, beaten and forced to bear what he was not able to bear for no reason. Likewise, they would be burned with fire and their limbs would be cut off for the most trivial reasons. They used to call the slave, "The tool that possesses a soul" and "The goods by which life is maintained."

However, the slave in Islam would be treated in a manner that was befitting the nobility and honor of a human being. Islam forbade beating and killing the slave, just as it forbade humiliating and cursing him. Islam commanded that the slave be treated with kindness. Here are the texts that speak of this:

Allāh the Almighty's statement:

﴿وَالْوَٰلِدَيْنِ إِحْسَانًا وَبِذَى الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَالْجَارِ ذِي الْقُرْبَىٰ وَالْجَارِ  
الْجُنُبِ وَالصَّاحِبِ بِالْجَنبِ وَابْنِ السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ﴾

*﴿And do good to parents, kinsfolk, orphans, Al-Masakin (the poor), the neighbor who is near of kin, the neighbor who is a stranger, the companion by your side, the wayfarer (you meet), and those (slaves) whom your right hands possess.﴾ (4:36)*

The statement of the Messenger ﷺ regarding them:

﴿هُمُ إِخْوَانُكُمْ وَخَوَلَاكُمْ جَعَلَهُمُ اللَّهُ تَحْتَ أَيْدِيكُمْ، فَمَنْ كَانَ أَخُوهُ تَحْتَ يَدِهِ  
فَلْيُطْعِمْهُ مِمَّا يَأْكُلُ وَلْيُلْبِسْهُ مِمَّا يَلْبَسُ، وَلَا تَكْلَفُوهُمْ مَا يَغْلِيهِمْ، فَإِنْ كَلَّفْتُمُوهُمْ  
فَاعِينُوهُمْ عَلَيْهِ﴾

*«They (the slaves) are your brothers and servants. Allāh has placed them beneath your hands (i.e. under your authority). So whoever's brother is beneath his hand, let him feed him from that which he eats and clothe him with what he wears. And do not burden them with what is too much for them. And if you give them some burdensome task, then help them with it.»*  
(Muslim)

And his statement:

«مَنْ لَطَمَ مَمْلُوكَهُ أَوْ ضَرَبَهُ فَكَفَّارَتُهُ أَنْ يُعْتِقَهُ»

*«Whoever strikes his slave or beats him, then his expiation is to free him.»* (Muslim)

And above all of this is the general call of Islam to free the slave and its encouragement and motivation to do so. The following matters testify to this:

1. Islam has made liberating the slave expiation for the sin of accidental murder. Likewise, it is an expiation for a number of offenses, such as *Ath-Thihar*, breaking an oath sworn by Allāh and violating the sacredness of Ramadhan by breaking the fast during it (i.e. having sexual relations with the spouse).

2. Islam orders making an agreement to facilitate a slave in buying back his freedom if he requests such an agreement, and it encourages helping him in that with shares of wealth. Allāh the Almighty said:

﴿وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِنْكُمْ لِيُحْتَمِلُوا مِنْكُمْ أَمْثِلُوا إِلَيْهِمْ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ﴾

*«And such of your slaves as seek a writing (of emancipation), give them such writing, if you find that there is good and honesty in them. And give them something (yourselves) out of the wealth of Allāh which He has bestowed upon you.»* (24:33)

3. Islam has allocated a portion of the collected *Zakah* (obligatory charity) for assisting in the liberation of slaves.

Allāh the Almighty said:

﴿إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالسَّكِينِ وَالْمُعَلِّمِينَ عَلَيْنَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ  
وَالْغُرَمِينَ وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ﴾

﴿Verily the Sadaqat are only for the Fuqara' (poor), and Al-Masakin (the poor) and those employed to collect (the funds); and to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allāh's cause, and for the wayfarer; a duty imposed by Allāh. And Allāh is All-Knower, All-Wise.﴾ (9:60)

4. The carrying over of manumission to the remaining shares of the slave if he has been partially manumitted. For verily if the Muslim frees his share of a slave, he is commanded to take responsibility for the remaining portion, pay its price to its owner and completely free the slave. The Prophet ﷺ said,

«مَنْ أَغْتَقَ شِرْكَائَهُ فِي عَبْدٍ فَكَانَ لَهُ مَا يَبْلُغُ ثَمَنَ الْعَبْدِ قَوْمَ عَلَيْهِ الْعَبْدُ قِيمَةً  
عَدْلٍ فَأَعْطَى شُرَكَاءَهُ حِصَصَهُمْ وَعَتَقَ عَلَيْهِ الْعَبْدُ»

«Whoever frees his share of a jointly possessed slave and he has sufficient money to manumit him completely, he should let its price be estimated by a just man and give his partners the price of their shares and manumit the slave.»<sup>[1]</sup>

5. The permission of taking slave girls as concubines so that they will one day become mothers of (their masters')

[1] Al-Bukhari and Muslim. The rest of the Hadith says:

«وَأِلَّا فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ»

«Otherwise he manumits whatever he can manumit of him.»

The meaning of the estimation of a just man is that the slave's price should not be made overly expensive, nor should it be made too cheap. This is the meaning of his statement in some of the reports:

«لَا وَكَسَ وَلَا شَطَطَ»

«Not depreciated, nor excessive.»

children and thus be freed. The Messenger of Allāh ﷺ said:

«أَيُّمَا أَمَةٍ وَلَدَتْ مِنْ سَيِّدِهَا فَفِيَّ حُرَّةٌ بَعْدَ مَوْتِهِ»

«Any slave woman who gives birth to a child by her master, then she is free after his death.»<sup>[1]</sup>

6. Freeing the slave was made the expiation for beating him. The Messenger of Allāh ﷺ said:

«مَنْ ضَرَبَ غُلَامًا لَهُ حَدًّا لَمْ يَأْتِهِ، أَوْ لَطَمَهُ فَإِنَّ كَفَّارَتَهُ أَنْ يُعْتِقَهُ»

«Whoever beats his slave or strikes him as a punishment for something he did not do, then verily his expiation is to free him.» (Ahmad, Abu Dawud, At-Tirmithi and Ibn Majah and it is Sahih)

7. Islam has made the slave free by being owned by one of his relatives. The Messenger ﷺ said:

«مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ فَهُوَ حُرٌّ»

«Whoever owns a relative of his (as a slave), then he (the slave) is free.» (Muslim)

### Note:

If someone says, "Why does Islam not obligate the manumission of slaves, making it something mandatory that the Muslim must do?"

We say, "Islam came while slaves were (already) possessed by people. It is not befitting the just Law (*Shari'ah*) of Allāh, which was revealed to preserve man's life, honor and wealth, to obligate people to abandon all of their possessions. Likewise, it is not in the best interest of many of the slaves to be set free, as there are among them women, children and even men who are not able to be self-

<sup>[1]</sup> Ibn Majah and Al-Hakim with a weak chain of narration. However, the majority of the scholars act according to it, and Mariyyah, the Copt, was freed due to her giving birth to the Messenger of Allāh's son, Ibrahim.



sufficient. This is because they may lack the ability to earn (wages) and they may be ignorant of the ways to acquire it. Therefore, remaining a slave with his Muslim master - who feeds him from what he eats, clothes him from what he clothes himself, and who does not burden him with work that he cannot bear - is thousands of times better than expelling him from the house that was kind and merciful to him, to the nightmare of being without and being deprived.

## Laws Regarding the Slave

### Manumission

#### Its Definition

Manumission is to free someone who is owned and liberate him from the bondage of slavery.

#### It Ruling

The ruling for manumission is that it is desired and recommended. This is due to the statement of Allāh the Almighty:

﴿فَكَرِّهَ﴾

﴿Freeing of a slave.﴾ (90:13)

And the statement of the Prophet ﷺ:

«مَنْ أَعْتَقَ رَقَبَةً مُؤْمِنَةً أَعْتَقَ اللَّهُ بِكُلِّ إِرْبٍ مِنْهَا إِرْبًا مِنْهُ مِنَ النَّارِ، حَتَّىٰ إِنَّهُ لَيُعْتِقُ  
الْيَدَ بِالْيَدِ، وَالرُّجْلَ بِالرُّجْلِ، وَالْفَرْجَ بِالْفَرْجِ»

«Whoever frees a believing slave, Allāh will free for every joint of the slave, a joint of his (the master) from the Hell-fire. He will even free a hand for a hand, a foot for a foot and a private part for a private part.» (Al-Bukhari and Muslim)

#### Its Regulations

The regulations of manumission are the following:

1. Manumission occurs by a clear statement, such as saying, "You are free," or "You are manumitted," or "I have freed you," or "I have manumitted you." Likewise, it may occur by suggestive wording, but with the intention of manumission, like, "Verily I have released your path," or "I no longer have authority over you."

2. Manumission is considered correct (i.e. acceptable) from whomever has the authority to dispose of wealth. This means that the person should be sane, mature and discerning. It is not correct (i.e. acceptable) for an insane person, a child or an ignorant person, who is considered legally incompetent, to manumit a slave. This is due to the fact that it is not permissible for them to dispose of and deal with wealth (i.e. financial matters).

3. If the slave is owned by two or more people, and one of the partners manumits his share of the slave, he should find out the value of the remaining share if he is wealthy, and he should free the slave entirely. If he is financially strained, then he only frees whatever he is able to free. This is due to the Prophet's statement:

«مَنْ أَعْتَقَ شِرْكَاءَ لَهُ فِي عَبْدٍ فَكَانَ مَعَهُ مَا يَبْلُغُ ثَمَنَ الْعَبْدِ قَوْمَ عَلَيْهِ قِيَمَةُ الْعَدْلِ، فَأَعْطَى شُرَكَاءَهُ حِصَصَهُمْ وَعَتَقَ جَمِيعَ الْعَبْدِ، وَإِلَّا عَتَقَ مِنْهُ مَا عَتَقَ»

*«Whoever frees his share of a jointly possessed slave and he has sufficient money to manumit him completely, should let its price be estimated by a just man and give his partners the price of their shares and manumit the slave; otherwise he manumits whatever he can manumit of him.»<sup>[1]</sup> (See earlier)*

[1] Some of the people of knowledge hold the view that if the slave is partially manumitted by (the payment of) wealth and some portion of him remains (enslaved), the slave is requested to work. If he collects the amount that will pay off the rest of his ownership, he gives it to the owner and he is manumitted. However, the preferred view is that working is not mandatory for the slave. Rather, it is only if he (the slave) thinks he can do it, and if not, it is not required of him.

4. Whoever attached a condition to the manumission of a slave, the slave is freed upon fulfillment of the condition. If the condition is not met, the slave is not freed. So whoever says, "You are free if my wife gives birth to a boy," then the slave is free from the moment the (boy) child is born.

5. Whoever has a slave and he frees part of him, it is obligatory for him to free the remainder of him as well. This is due to the generality of the Prophet's statement:

«مَنْ أَعْتَقَ شِرْكَاءَ لَهُ فِي عَبْدٍ...»

«Whoever frees his share of a jointly possessed slave» to the end of the Hadith.

And his statement:

«مَنْ أَعْتَقَ شِقْصًا لَهُ فِي مَمْلُوكٍ فِيهِ مِنْ مَالِهِ...»

«Whoever frees his share of a slave, he must free him (i.e. the rest of him) from his wealth.» (Al-Bukhari and Muslim)

6. Whoever frees a slave or slaves of his during a terminal illness, the amount of slaves that are included in a third of his wealth are freed, as this is similar to a bequeathal, and a bequeathal is not permissible for more than a third of the wealth.

## **At-Tadbir**

### **Its Definition**

*At-Tadbir* is an attached promised of manumission of a slave upon the death of his owner, by saying to his slave, "You are free after my death." So when the master dies, the slave is manumitted.

### **Its Ruling**

The ruling of *At-Tadbir* is that it is permissible, unless the master does not own anything other than the slave that he wishes to manumit upon his death. This is due to what the two Shaykhs (Al-Bukhari and Muslim) recorded from Jabir,

may Allāh be pleased with him, that a man promised to free a slave upon his death then afterward he became needy. So the Messenger of Allāh ﷺ said:

«مَنْ يَشْتَرِيهِ مِنِّي؟»

«Who will buy him (the slave) from me?»

So he sold him to Nu'aym bin 'Abdullah for eight hundred dirhams and he gave it to him (the original owner). Then he said:

«أَنْتَ أَحْوَجُ مِنْهُ»

«You are more needy than him.»

### Its Wisdom

The wisdom behind *At-Tadbir* is to make things easy for the Muslim. For it may be that a Muslim has a slave and he desires to free him, but he finds himself in need of his services and his entertainment. Thus, he promises to free him upon his death and he attains the reward of manumitting a slave without losing his (the slave's) benefit during his lifetime.

### Its Rules

The rules of *At-Tadbir* are as follows:

1. *At-Tadbir* is done by saying, "You have a promise of *At-Tadbir* from me," or "I have given you *At-Tadbir*," or "If I die, you are free," and similar phrases.
2. The freedom of a slave that was promised *At-Tadbir* after the death (of the master) is determined by a third of the wealth. If the slave may be included in a third of the wealth (of the deceased master), he is freed, and if not, he is freed to the extent of however much a third is (i.e. partially freed). This is the opinion of the majority of the Companions, the students of the Companions and the Imams. This is because it (*At-Tadbir*) is a gift just like the bequeathal, and the bequeathal is not permissible for more

than a third of the wealth.

3. If the promise of *At-Tadbir* is attached to a condition, this is permissible. If the condition is met, the slave is freed, and if not, he is not freed. This is due to the Prophet's statement:

«الْمُؤْمِنُونَ عَلَى شُرُوطِهِمْ»

«The believers are bound to their conditions.»<sup>[1]</sup>

So if the person says, "If I die from this illness of mine, then you are free," and then he dies, the slave is free. And if he does not die, then the slave is not free.

4. It is permissible to sell the slave who has a promise of *At-Tadbir*, to pay off a debt, or for a need.<sup>[2]</sup> This is due to the fact that the Messenger ﷺ sold the slave of a man who had given him (the slave) a promise of *At-Tadbir* when he saw the man in need of the slave's price. (Al-Bukhari and Muslim) 'A'ishah, may Allāh be pleased with her, also sold a slave woman she owned who had a promise of *At-Tadbir*, when the slave woman put a spell on her. (Ash-Shafi'i and Al-Hakim)

5. If the slave woman is given a promise of *At-Tadbir* and she is pregnant, her child holds the same position as her and it is freed along with her upon the death of her owner. This is due to the statement of 'Umar and Jabir, may Allāh be pleased with them, "The child of the slave woman with a promise of *At-Tadbir* holds the same status as her." (This

[1] This *Hadith* has been mentioned previously with the wording:

«الْمُؤْمِنُونَ عَلَى شُرُوطِهِمْ»

«The Muslims are bound to their conditions» and it has a *Sahih* chain of narration.

[2] Concerning selling the slave who has a promise of *At-Tadbir*, there is a difference of opinion. The correct view is that he may not be sold unless there is a need to do so, like paying off a debt or something similar.

was mentioned by the author of *Al-Mughni*.)

6. It is lawful for the master to have sexual intercourse with his slave woman whom he has given a promise of *At-Tadbir*, because she is still his right hand possession, and Allāh says:

﴿...إِلَّا عَلَىٰ أَنْزِلِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ﴾

﴿Except for their wives or (the slaves) that their right hands possess.﴾ (23:6)

Also, the permissibility of having sexual intercourse with her has been reported from the majority of the Companions, may Allāh be pleased with them.

7. If the slave who has been given a promise of *At-Tadbir* murders his master, his promise of *At-Tadbir* is nullified. Thus, he is not manumitted and he is dealt with in opposition to his intent. This is so that the slaves who have been given promises of *At-Tadbir* do not seek to hasten the death of those masters who promised them *At-Tadbir*.

## ***Al-Mukatab***

### **Its Definition**

*Al-Mukatab* is a slave whose master frees him when he pays his master some wealth in designated installments. When complete, he is given a deed in writing. So when he finishes making his payments at their appointed times, he is free.

### **The Ruling of *Al-Mukatabah***

*Al-Mukatabah* is recommended due to the statement of Allāh the Almighty:

﴿وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِنَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُواهُمْ إِن عِلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِّن مَّالِ اللَّهِ الَّذِي آتَاكُمْ﴾

﴿And such of your slaves as seek a writing (of emancipation), give them such writing, if you find that there is good and honesty in them. And give them something (yourselves) out of

*the wealth of Allāh which He has bestowed upon you.* ﴿24:33﴾

And the statement of the Messenger ﷺ:

«مَنْ أَعَانَ غَارِمًا أَوْ غَارِيًا، أَوْ مُكَاتَبًا فِي كِتَابَتِهِ أَظَلَّهُ اللَّهُ يَوْمَ لَا ظِلَّ إِلَّا ظِلُّهُ»

«Whoever helps someone in debt or someone going out for Jihad or a Mukatab in his contract of manumission, Allāh will give him shade on a day when there will be no shade but His Shade.» (Ahmad and Al-Hakim with a Sahih chain of narration)

### Its Regulations

The laws regarding the *Mukatab* are as follows:

1. The *Mukatab* is freed when he pays the last payment required by his written agreement of manumission.
2. The *Mukatab* is a slave and the laws of a slave apply to him as long as he has even one dirham left of his payments. This is due to a number of statements from the Companions and the narration of 'Amr bin Shu'ayb, who reported from his father, who reported from his grandfather that the Prophet ﷺ said:

«الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ»

«The *Mukatab* is a slave as long as he has a dirham left to pay.» (Abu Dawud and Al-Baihaqi with a good chain of narration)

3. It is obligatory upon the master to help his *Mukatab* with anything that he can of wealth, such as paying a quarter of his written agreement or something similar to that, in order to take part in his manumission. This is due to the statement of Allāh the Almighty:

﴿وَمِنْ مَّا لَكُمْ﴾

«And give them something (yourselves) out of the wealth of Allāh which He has bestowed upon you.» ﴿24:33﴾

And it is permissible for him to give him some money or lower the price of his written agreement for him.

4. If the *Mukatab* pays the money in advance in one or two payments, for example, his master is obligated to accept it, unless that will be harmful to him. In that case he is not obligated to accept it. This has been reported from 'Umar, may Allāh be pleased with him. (This was mentioned by the author of *Al-Mughni*.)

5. If the master dies before the slave completes the payments of his written agreement, he still is responsible for paying the remainder and he pays the remaining payments to the heirs of his master. If he is unable to pay the remainder, he is returned to the status of (normal) slavery and he goes to (the possession of) the inheritors.

6. The master should not prevent his *Mukatab* from traveling and working. He may only prevent him from marrying, due to the Prophet's statement:

«أَيُّمَا عَبْدٍ تَزَوَّجَ بِغَيْرِ إِذْنِ مَوْلَاهُ فَهُوَ عَاهِرٌ»

«Any slave who marries without the permission of his masters, then he is a fornicator.» (Ahmad)

7. It is not permissible for the master to have sexual intercourse with his female *Mukatab*. This is because the written agreement of *Mukatabah* prevents using her and benefiting from her, and sexual intercourse is among the general benefits that are cut off by the *Mukatabah* agreement. This is the view of the majority of the Imams.

8. If the *Mukatab* becomes unable to pay a payment of his agreed payments, then the period passes until another payment is due and he cannot pay that one either, it is permissible for the master to consider it too difficult for him and return him back to the status of a normal slave, just as he was before. This is due to the statement of 'Ali, may Allāh be pleased with him, "The *Mukatab* is not returned to the status of slavery until he misses two consecutive payments."

9. The child of a female *Mukatab* is manumitted with her



when she has completed her payments and is freed. If she is unable to make the payments, she is returned to the normal status of slavery and her child is also returned to slavery with her. There is no difference in this situation, whether she was pregnant at the time her *Mukatabah* agreement was made or if she became pregnant afterwards. This is the view of the majority.

10. If the *Mukatab* is unable to make his payment and he has some wealth in his possession that belonged to his master on account of him, but if he was given the wealth from the *Zakah*, then this money should be given to the poor and the needy, as they have more right to it than the wealthy master.

## ***Ummul-Walad* (The Mother of a Child)**

### **Its Definition**

*Ummul-Walad* is the slave girl whose master has sexual relations with her, and as a result she gives birth to a male or female child by him.

### **The Ruling**

It is permissible for the master to have sexual relations with his female slave and if she gives birth to a child by him, she becomes *Ummul-Walad*. This is due to the statement of Allāh the Almighty:

﴿وَالَّذِينَ هُمْ لِأُزْوَاجِهِمْ حَافِظُونَ ۖ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ﴾

«And those who guard their chastity (i.e. private parts from illegal sexual acts). Except from their wives or the (women slaves) whom their right hands possess - for (then) they are not blameworthy. ﴿ (70:29-30)

And verily the Messenger of Allāh ﷺ has sexual relations with Mariyyah Al-Qibtiyyah and she gave birth to Ibrahim. Then the Prophet ﷺ said:

«أَغْنَتْهَا وَلَدُهَا»

«Her son (Ibrahim) has freed her.»<sup>[1]</sup>

Likewise, Hajar, the mother of Isma'il, was a slave girl of Ibrahim, and she gave birth to Isma'il by him.

### **The Wisdom Behind It**

From the wisdom of having sexual relations with the slave girls are the following:

1. Mercy for the female slave in allowing her to fulfill her need from her desires.
2. Preparing her to become an *Ummul-Walad*, and therefore be freed upon the death of her master.
3. Her having sex with her master brings about an increase in the master's concern for her. Thus, he becomes more concerned with her cleanliness, her clothing, her bedding (i.e. sleeping arrangements), her nourishment and other related things.
4. Gentleness for the Muslim, as the Muslim may not be able to provide for free women (i.e. as wives). Thus, he has been allowed to have sexual intercourse with slave women, as a means of making matters easy for him and a mercy for him.

### **Regulations for Ummul-Walad**

The case of an *Ummul-Walad* has certain laws that are as follows:

1. The *Ummul-Walad* is just like the slave woman in all of her matters of servitude, sexual relations (with her master), manumission, the limits of her covering her private parts and her marrying, except that it is not permissible to sell her. This is because the Prophet ﷺ prohibited selling the *Ummahatul-Awlad* (plural of *Ummul-Walad*).<sup>[2]</sup> The reason

[1] Ibn Majah and Ad-Daraqutni, and it is defective. However, the majority of scholars act according to it.

[2] 'Umar reported this prohibition from the Prophet ﷺ in regards to selling the *Ummahatul-Awlad* and it is recorded in *Al-Muwatta'* of Malik.

for this prohibition is that selling her is contradictory to her expected freedom upon the death of her master.

2. The *Ummul-Walad* is manumitted merely by the death of her master. This is due to the Prophet's statement:

«أَيُّمَا أَمَةٍ وَلَدَتْ مِنْ سَيِّدِهَا فَهِيَ حُرَّةٌ عَنْ دُبُرِ مِنْهُ»

«Any woman who gives birth to a child by her master, then she is free upon his death as *At-Tadbir*.» (Ibn Majah)

3. The slave girl becomes *Ummul-Walad* even if the child dies before birth, as long as his creation (form) was complete and its appearance was clearly (that of a child). This is due to the statement of 'Umar, may Allāh be pleased with him, "If the slave woman gives birth to a child by her master, she is freed even if the child was born dead." (This was mentioned by the author of *Al-Mughni*.)

4. It makes no difference in freeing the *Ummul-Walad*, whether she is a Muslim or a disbeliever. However, some of the people of knowledge do not think that the disbelieving woman should be manumitted. Yet, the generality of the text dictates that there is no difference (between them in this matter), as is the view of the majority.

5. If the *Ummul-Walad* is manumitted upon the death of her master, the wealth that she possesses belongs to the inheritors of her master, as the *Ummul-Walad* was a slave girl before the death of her master and the possessions of the slave girl belong to her master.

6. If the master of the *Ummul-Walad* dies, she is free of him (i.e. as a waiting period) by one menstrual cycle, due to her leaving his ownership by manumission.

## ***Al-Wala'***

### **Its Definition**

*Al-Wala'* is a form of family relation because of the beneficence of manumission. Whoever frees a slave in any

manner, that manumission becomes a bond of relationship for him. So if he (the slave) dies and does not leave any male relatives from his family members, the one who freed him and his male relatives become the male relatives of this manumitted slave. This is due to the statement of the Prophet ﷺ:

«إِنَّمَا الْوَلَاءُ لِمَنْ أَغْتَقَ»

«Verily the Wala' is only for whoever manumitted (the slave).»

(Al-Bukhari and Muslim)

### Its Ruling

*Al-Wala'* is legislated by the statement of Allāh the Almighty:

﴿فَإِخْوَتُكُمْ فِي الدِّينِ وَمَوْلَاكُمْ﴾

«Then they are your brothers in faith and your freed slaves.»

(33:5)

And the Prophet's statement:

«الْوَلَاءُ لِمَنْ أَغْتَقَ»

«*Al-Wala'* is for whoever manumitted (the slave).»

And his statement:

«الْوَلَاءُ لُحْمَةٌ كُلُّحْمَةٍ النَّسَبُ لَا يَبَاعُ وَلَا يُوهَبُ»

«*Al-Wala'* is a bond of relationship like the bond of relationship from family lineage. It cannot be sold or given away.» (At-Tabarani, Al-Bayhaqi and Al-Hakim with a *Sahih* chain of narration)

### Its Regulations

The laws of *Al-Wala'* are as follows:

1. *Al-Wala'* is for whoever manumits (the slave) by any means of manumission, whether it was *Al-Mukatabah*, *At-Tadbir* or other than them.
2. *Al-Wala'* may not be sold or given away. Thus, it may not

be transferred from its holder to someone else by sale or gift. This is because it is like family lineage and family lineage cannot be sold or given away under any circumstance. The Prophet ﷺ said:

«الْوَلَاءُ لُحْمَةٌ كُلُّحِمَةٍ النَّسَبُ لَا يَبَاعُ وَلَا يُؤْتَى»

*«Al-Wala' is a bond of relationship like the bond of relationship from family lineage. It cannot be sold or given away.»*

3. No one inherits by Al-Wala' except the one who freed (the slave), whether male or female, or the male relatives of the one who freed him, not including the females. This is explained in the science (knowledge) of the Laws of Inheritances.



And Allāh the Almighty knows best, and His path is most correct in guidance and most straight. May Allāh send prayers of blessings and peace upon our Prophet, Muhammad, his family and his Companions.

This work is complete and all praises are due to Allāh. I hope that the one who goes through its pages and reads it, corrects any transgressions of the pen that it may contain, and that where any understanding may be confused. Thus, I apologize, as the giving person may stumble, and perfection is for Allāh, the One, the Irresistible.

